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STATE OF MINNESOTA—IN SUPREME COURT

No. 36143

STATE OF MINNESOTA,
Plaintiff-Respondent,

vs.

INTERNATIONAL HARVESTER COMPANY, A NEW JERSEY CORPORATION,
Defendant-Appellant

STATEMENT AS TO JURISDICTION

In compliance with Rule 12(1) of the Rules of the Supreme Court of the United States, as amended April 6, 1942, appellant presents and files its statement particularly disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the decision or judgment in question.

Statutory Provisions Sustaining Jurisdiction

Jurisdiction of the Supreme Court of the United States is invoked under Title 28, United States Code Annotated, Section 1257(2) which provides:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> (1) . . .
>
> (2) By appeal, where is drawn in question the validity of a statute of any State on the ground of

its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

(3) . . ."

Legislation Drawn in Question

This case draws into question the validity of State legislation, to-wit, Section 206.21 in conjunction with Sections 210.11 and 610.19 of Minnesota Statutes Annotated, which read respectively as follows:

"206.21. Employees may vote without loss of time. Every employee entitled to vote at an election shall be permitted to absent himself from his work for that purpose during the forenoon of each election day, without a penalty or deduction from salary or wages on account of such absence."

"Section 210.11. Refusing employee election privileges. Every person who as principal or as an official or agent of any other person, shall directly or indirectly refuse, abridge, or in any manner interfere with any of the election privileges or immunities of any employee of himself or his principal shall be guilty of a misdemeanor."

"Section 610.19. Punishment of Misdemeanors when not fixed by statute. Whoever shall be convicted of a misdemeanor for which no punishment is prescribed by any statute in force at the time of conviction and sentence shall be punished by imprisonment in the county jail for not more than three months, or by a fine of not more than $100."

These statutes were construed and applied to the undisputed facts showing that the appellant was not guilty of a misdemeanor as charged and that appellant was exercising the right of freedom of contract guaranteed against abridgment by Section 1 of the Fourteenth Amendment of the Constitution of the United States, and that the enforcement of said statutes operated to abridge the privi-

leges or immunities of appellant and all members (individuals, partnerships, associations or corporations) of the class to which appellant belongs and against which said statutes were directed as citizens of the United States, and to deprive each of them respectively of liberty or property without due process of law and to deny to each of them respectively within the jurisdiction of the State of Minnesota the equal protection of the laws contrary to and in violation of the provisions of Section 1 of the Fourteenth Amendment of the Constitution of the United States.

Constitutional Provisions Involved

Section 1 of the Fourteenth Amendment of the Constitution of the United States is invoked against the conviction of the appellant under the foregoing statutes. The pertinent parts of said section read as follows:

> "Section 1. . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law. Nor deny to any person within its jurisdiction the equal protection of the laws."

Supreme Court of the State of Minnesota the Court of Last Resort

The Supreme Court of the State of Minnesota was the highest court in the State of Minnesota in which a decision could be had in this cause. The judgment of conviction by the Municipal Court of the City of St. Paul, in Ramsey County, Minnesota, (a trial court of original jurisdiction), after the affirmance thereof by the Supreme Court of the State of Minnesota, to which an appeal from such judgment was duly taken, and which court thereafter denied a petition for rehearing or reargument, was not susceptible to further review in the State courts.

Timeliness

The judgment of conviction of appellant by the Municipal Court of the City of St. Paul, in Ramsey County, Minnesota, and the imposing of a fine of $100.00, after a trial by said Court without a jury, was entered therein on May 20, 1953.

An appeal from said judgment was taken by appellant to the Supreme Court of the State of Minnesota, which, after considering such appeal, did on March 5, 1954, render its opinion and decision affirming the judgment appealed from, whereupon the judgment of conviction made by said Municipal Court became final. A copy of such opinion and decision or judgment of said Supreme Court is hereto attached, marked "Appendix 1".

A petition for rehearing or reargument was denied April 21, 1954 and stay vacated, a copy of which order is hereto attached marked Appendix 2.

However, in view of appellant's indicated purpose to petition for appeal to the United States Supreme Court, said order vacating such stay was upon Appellant's petition recalled and stay was extended by order made and filed on April 29, 1954, a copy of each of which is hereto attached marked Appendix 3.

The petition for appeal to the United States Supreme Court was presented and filed June 2nd, 1954, which was within ninety days from March 5, 1954, the date the decision of the Supreme Court of the State of Minnesota, was rendered and filed. This appeal is therefore timely.

Cases Believed to Sustain Jurisdiction

The cases believed to sustain the jurisdiction of the Supreme Court of the United States are:

Day-Brite Lighting, Inc. v. *State of Missouri* (March 3, 1952), 342 U. S. 421, 96 L. Ed. 469, 72 S. Ct. 405;

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Charleston Fed. Sav. & Loan Assn. v. *Alderson,* 324 U. S. 182, 89 L. Ed. 857, 65 S. Ct. 624;

Wilson v. *Cook,* 327 U. S. 474, 90 L. Ed. 793, 66 S. Ct. 663;

People v. *Chicago, M. & St. P. R. Co.,* 306 Ill. 486, 138 N. E. 155, 28 A. L. R. 610;

Illinois Central Railroad Company v. *Commonwealth of Kentucky,* 305 Ky. 632, 204 S. W. (2d) 973.

Nature and History of the Action

This action arose in the Municipal Court of the City of St. Paul, in Ramsey County, Minnesota, a court of original jurisdiction, upon the complaint dated December 16, 1952, under oath of one Francis Davidson, who charged that,

> "On the 4th day of November, A. D. 1952, at the City of St. Paul, and within the corporate limits of said City of St. Paul, in the County of Ramsey, and State of Minnesota, one International Harvester Company (a New Jersey corporation) then and there being, did wrongfully, unlawfully and wilfully deduct from the wages of Thomas D. Kennedy the sum of Three and 50/100 Dollars ($3.50) for absenting himself from his work on the forenoon of November 4, 1952, an election day, for the purpose of voting, as provided by M. S. A., Sections 206.21 and 210.11, and did in the manner and form aforesaid abridge and interfere with the election privileges of the said Thomas D. Kennedy, who was then and there an employee of the said defendant, International Harvester Company, contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Minnesota.
>
> "Wherefore, complainant prays that said offender may be arrested and dealt with according to law." (R. 1, 2).

Raising the Federal Questions

Defendant, International Harvester Company, appeared by its attorney, Fred N. Furber, at 9:00 a. m. on January 12, 1953, before the Honorable James C. Otis, Judge of said Municipal Court, Criminal Branch, and entered a plea of "not guilty" to the charge of violating the provisions of Sections 206.21 and 210.11 of Minnesota Statutes Annotated, as set forth in said complaint. (R. 3).

The Court then directed said defendant to appear for trial on January 26, 1953, at 9:00 a. m., at which time the case was continued to February 5, 1953, at 9:00 a. m. (R. 3).

The trial began before Judge Otis, without a jury, on the 5th day of February, 1953, at 10:20 a. m. (R. 4). At the opening of the trial the defendant, International Harvester Company, entered a general objection to the introduction of any testimony under the complaint herein and that the action be dismissed, upon the grounds, among others, that said Section 206.21 in conjunction with Section 210.11 and 610.19 of Minnesota Statutes Annotated, were void and unenforcible because, among other things, in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States, which declares that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States" and also violates that portion of said Section 1 of the Fourteenth Amendment which declares,

> "nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

and was an arbitrary, unreasonable and discriminatory exercise of the police powers of the State of Minnesota that is unconstitutional and void since it violates, among

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other things, said Section 1 of the Fourteenth Amendment to the Constitution of the United States. (R. 7, ff. 2-3; 8, f. 3; 9, f. 1; 9, f. 2; 10, ff. 11-12).

The Court overruled the objection and denied the motion at that time with the privilege to renew the motion at a later time. (R. 12, f. 2).

The trial proceeded, evidence and testimony were received (R. 12 to 32; 25-52) and at the close of the trial, defendant, International Harvester Company, renewed its original motion to dismiss the action made at the opening of the trial, and in addition, added the further ground for the motion to dismiss, that if the motion be denied as first presented, and as renewed, then that the union employment contract constituted a waiver by defendant's employees, including Thomas D. Kennedy, who is mentioned in the complaint, of the privilege accorded by Section 206.21 of the Minnesota Statutes, without loss of pay to absent themselves in the forenoon of election day, November 4, 1952, for the purpose of voting, and hence defendant in withholding pay of said Kennedy pursuant to said contract for the time in which he performed no service by reason of so absenting himself, had no criminal intent and was not guilty of a misdemeanor as charged. (R. 31, f. 3).

The aforesaid objection to the introduction of any testimony and the motions to dismiss were denied by written order of Judge Otis dated May 1st, 1953, and defendant was adjudged guilty as charged in the complaint herein. (R. 54).

Thereafter, on May 15, 1953, Judge Otis announced his decision of May 1, 1953, as aforesaid, and imposed a fine of $100.00 upon defendant, with a stay pending the perfecting by defendant of an appeal to the Supreme Court of Minnesota. The docket of the Clerk of said Court recites the record as above under date of May 20, 1953 (R. 76-77).

Judge Otis made and filed a memorandum in connection with his decision. (See R. 55 to 76).

The appellant (defendant below) promptly prepared and filed an appeal to the Supreme Court of the State of Minnesota, with supersedeas and cost bond duly approved in connection therewith (R. 77-78) and, among others, the foregoing objections to introduction of testimony and motion to dismiss the action was assigned as error on said appeal to the Supreme Court of Minnesota. (See Assignment of Errors No. 1 to 5 of appellant's brief at pages 12 to 14).

The Supreme Court of Minnesota duly considered said appeal and such assignments of error and rendered its opinion and decision on March 5, 1954, affirming the judgment so appealed from. By such opinion and decision, said court specifically declared that the provisions of said Sections 206.21 and 210.11, in conjunction with Section 610.19 of Minnesota Statutes Annotated, were not repugnant to or in violation of the provisions of Section 1 of the Fourteenth Amendment of the Constitution of the United States and did not unlawfully interfere with the right to freedom of contract, nor violate the due process or equality provisions of said Section 1 of the Fourteenth Amendment; and was not so arbitrary, discriminatory, unreasonable or unequal in their application to employers of the class to which appellant belongs, or to employees placed in a certain category by reason of daily work shifts and thereby excluded from the benefits of the statutory provisions, as to offend these provisions and constitute an invalid exercise of the State's police power. Said Court also specifically held that the provisions in the employment contract to the effect that employees were entitled to time off to vote, but without pay (R. 36, f. 4 to 37, f. 1), did not constitute a valid waiver of the prohibition against a

penalty or deduction from salary or wages found in Section 206.21, Minnesota Statutes Annotated. (See Appendix No. 1).

On April 21, 1954, said Supreme Court of the State of Minnesota denied the petition of appellant for a rehearing or reargument of said appeal (see Appendix 2) and this precluded further review in the State courts, without removing or curing the points of conflict with Section 1 of the Fourteenth Amendment to the Constitution of the United States as set forth in Assignment of Errors Nos. 1 to 9, inclusive.

Statement of the Grounds Upon Which It Is Contended the Questions Involved Are Substantial

Minnesota Statutes Annotated here involved are the following:

> "Section 206.21. *Employees May Vote Without Loss of Time.* Every employee entitled to vote at an election shall be permitted to absent himself from his work for that purpose during the forenoon of each election day, without a penalty or deduction from salary or wages on account of such absence."
>
> "Section 210.11. *Refusing Employee Election Privileges.* Every person who as principal or as an official or agent of any other person, shall directly or indirectly refuse, abridge, or in any manner interfere with any of the election privileges or immunities of any employee of himself or his principal shall be guilty of a misdemeanor."
>
> "Section 610.19. *Punishment of Misdemeanor When Not Fixed by Statute.* Whoever shall be convicted of a misdemeanor for which no punishment is prescribed by any statute in force at the time of conviction and sentence shall be punished by imprisonment in the county jail for not more than three months, or by a fine of not more than $100."

Statutes Have Widespread Application

A reference to the Stipulation of Facts, Exhibit A, (see paragraphs 10 to 16 (R. 41 to 43)) and Exhibit B attached thereto, shows that the number of persons who are employers of voters in this State is very substantial. The statutes in question have a state-wide and very general impact (R. 36, f. 2; 28; 29).

In the case at bar, and in many industries (R. 41, f. 3; 42, ff. 1-2) the employer engages for the operation of his plant or business many workers on first, second or third shifts during each 24-hour period, only one of which may extend through the forenoon of an election day. The election polls on election days are open for thirteen hours consecutively, beginning at 7:00 o'clock in the forenoon and continuing until 8:00 o'clock in the evening, or from 8:00 o'clock in the forenoon and continuing until 9:00 o'clock in the evening, (R. 42, f. 3 to 43, f. 1). In the City of St. Paul, Minnesota, the polls opened at 7:00 a. m. and closed at 8:00 p. m. on November 4, 1952. (R. 43, f. 1).

As pointed out above, the statutes in question have a state-wide application and are directed against and affect every person or concern (individual, partnership, association or corporation) and the officials or agents of each thereof) who employ one or more persons entitled to vote at an election in the State of Minnesota. Included in this category are the many thousands of housekeepers, hotel or innkeepers, storekeepers, draymen, gardeners, dairymen, farmers, carriers, warehousemen, professional offices, manufacturers, distributors, and all other employers of such labor, whether they constitute large or small enterprises. The statute also embraces in its scope all officers or agents of employers of voters, whether violating the statute directly or indirectly. (See Section 210.11, M. S. A.).

Ostensible Purpose; Special Privilege; Corporations Included in Designation "Every Person"

The ostensible purpose of the foregoing statute appears from the language of Section 206.21, M. S. A. to be:

> (1) to induce employed workers to vote on election days; and to do so by:
> (2) requiring the employer to permit every such worker entitled to vote employed in the forenoon of any election day "to absent himself from his work for that purpose" during such forenoon period "without penalty or deduction from salary or wages on account of such absence."

It is obvious, therefore, that the statute grants a special privilege to such employees (who work in the forenoon of election days) to be "absent from their work in the forenoon of an election day" to vote "without penalty or deduction of wages or salary" for the time of such absence. It also imposes the statutory punishment for a misdemeanor if its terms are not complied with by the employer or an official or agent of such employer. The penalty for such an offense is prescribed in Section 610.19, M. S. A. as

> "imprisonment in the county jail for not more than three months, or by a fine of not more than $100."

The effect of the statute is, therefore, to put in the same class the employers of workers entitled to vote, whether they be individuals, partnerships, associations, or officials or agents of any of them. It follows from this that the phrase "every person" as used in Section 210.11 M. S. A. includes a corporate employer.

This is shown by reference to the early statute (chapter 4, Section 109, Laws of 1893, reenacted as Section 114, Minnesota Statutes of 1894) which used the phrase, "any person or corporation or member thereof," and in the

Revised Laws of 1905, Section 371, the language was reduced to its present form, namely:

> "Every person who, as principal or as an official or agent of any other person. . . ."

This conclusion is further sustained by Section 610.02, Minnesota Statutes Annotated, which provides:

> "In the constructions of Part V (relating to crime and criminals) save when otherwise plainly declared or clearly apparent from the context, the following rules shall be observed:
> "(1) The word person includes a corporation or joint stock association. . . ."

Also in Dunnell's Minnesota Digest, 2nd Ed., Vol. 5, under the title "Person", it is stated:

> "The word person may include corporations, partnerships and all incorporated associations" (citing cases).

Again, in *State* v. *Minnesota Milk Co.*, 124 Minn. 34, 38, 144 N. W. 417, the Minnesota Supreme Court said:

> "Generally speaking, corporations are included within the scope" of statutes declaring that any person violating the law shall be punished."

It must also be assumed that the State of Minnesota, since it instituted this criminal proceeding, under said statutes, against appellant, deemed the latter, though a corporation, to be one of the members of the class of employers against which said Section 206.21, in conjunction with 210.11, M. S. A. is directed to accomplish the purpose of inducing voting as indicated above.

Likewise, in convicting appellant of the misdemeanor of deducting $3.50 from the wages of Thomas D. Kennedy, one of its employees, for absenting himself from his work

in the forenoon of said day (November 4, 1952), an election day, for the purpose of voting, as charged, the trial court adopted the view that appellant was a member of the class of employers to which the phrase "every person" was by said statutes applied, and in its decision affirming the judgment of conviction the Minnesota Supreme Court joined in such conclusion.

Re "Citizen" and "Person" as Used in 14th Amendment to United States Constitution, Section 1

The following decisions of the United States Supreme Court explain the significance of the term "citizen" and "person" and make clear that the due process of law and equal protection clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States, applies to corporations as "persons" as well as to individuals.

In *Colgate* v. *Harvey*, 296 U. S. 404, 80 L. Ed. 299, 56 Sup. Ct. 252, relating to income taxation by the State of Vermont, holds that, while the Fourteenth Amendment does not create a national citizenship, it has the effect of making that citizenship paramount and dominant instead of derivative and dependent upon state citizenship. Mr. Justice Sutherland on this point said:

> "The result is that whatever latitude may be thought to exist in respect of state power under the Fourth Article, a state cannot, under the Fourteenth Amendment, abridge the privileges of a citizen of the United States, *albeit* he is at the same time a resident of the state which undertakes to do so. . . .
>
> "Under the Fourteenth Amendment, therefore, the simple inquiry is whether the privilege claimed is one which arises in virtue of national citizenship. If the privilege be of that character, no state can abridge it."

In *Grosjean* v. *American Press Co.*, 297 U. S. 233, 80 L. Ed. 660, 56 Sup. Ct. 417, involving a license tax directed against the business of publishing advertising in any newspaper, etc., having more than a stated circulation, held to be in contravention of due process under the Fourteenth Amendment. Therein the Supreme Court said:

> "Appellant contends that the Fourteenth Amendment does not apply to corporations; but this is only partly true. A corporation, we have held, is not a 'citizen' within the meaning of the privileges and immunities clause. *Paul* v. *Virginia*, 8 Wall. 168, 19 L. Ed. 357. But a corporation is a 'person' within the meaning of the equal protection and due process of law clauses, which are the clauses involved here. *Covington & L. Turnp. Road Co.* v. *Sandford*, 164 U. S. 578, 592, 41 L. Ed. 560, 565, 17 S. Ct. 198; *Smyth* v. *Ames*, 169 U. S. 466, 522, 42 L. Ed. 819, 840, 18 S. Ct. 418."

It follows therefore that appellant, a corporation, is in position as a "person" directly affected by the operation of Section 206.21 in conjunction with Sections 210.11 and 610.19, Minnesota Statutes Annotated, to attack the constitutionality of said statutes under applicable provisions of the Constitution of the United States.

All Federal Constitutional Questions Affecting the Class of Employers to Which Appellant Belongs Are Subject to Review on This Appeal

As a "person" who is directly and adversely affected and injured, and as a member of the class of persons whose rights are also directly affected, by Section 206.21 in conjunction with Sections 210.11 and 610.19, Minnesota Statutes, appellant may attack the constitutionality of said statutes, under the Constitution of the United States, as to all matters wherein it is directly affected, as well as those affecting the class of employers to which it belongs.

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This right of review from the standpoint of all members of the class of employers to which appellant belongs is amply sustained by the authorities. Furthermore, it was applied without question by the Supreme Court of Minnesota in determining the appeal from said Municipal Court judgment here involved.

See: Rights Must Be Affected—

11 American Jurisprudence, "Constitutional Law" Section 111;

State v. *Hoffman,* 159 Minn. 401, 199 N. W. 175;

State ex rel. Clinton Falls Nursery Co. v. *Steele County,* 181 Minn. 427, 232 N. W. 737, 71 A. L. R. 1190.

Membership in Affected Class Sustains Right—

People of the State of New York ex rel. Albert J. Hatch v. *Reardon,* 204 U. S. 152-160, 51 L. Ed. 415, 422, 27 Sup. Ct. Rept. 188, 9 A. & E. Ann. Cas. 736;

Southern Railway Co. v. *King,* 217 U. S. 524, 54 L. Ed. 868-874;

Savage v. *Jones,* 225 U. S. 501, 56 L. Ed. 1182, 32 Sup. Ct. 715.

Re Assignments of Error Nos. 1 to 9

The nine Assignments of Error present together the Federal constitutional questions here involved.

All include with some necessary overlapping the challenge that Section 206.21, in conjunction with Sections 210.11 and 610.19 of Minnesota Statutes Annotated, are repugnant to and in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States. These Assignments of Error will therefore be discussed together unless otherwise indicated under Points I and II respectively as hereinafter set forth.

POINT I. AS CONSTRUED AND APPLIED BY THE SUPREME COURT OF THE STATE OF MINNESOTA, SECTION 206.21, IN CONJUNCTION WITH SECTIONS 210.11 and 610.19 OF MINNESOTA STATUTES ANNOTATED, CONSTITUTE AN ARBITRARY INTERFERENCE WITH FREEDOM OF CONTRACT BETWEEN EMPLOYERS AND EMPLOYEES AND A TAKING OF PRIVATE PROPERTY OF SUCH EMPLOYERS WITHOUT JUST COMPENSATION AND WITHOUT DUE PROCESS OF LAW, CONTRARY TO SECTION 1 OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES, TO WHICH THEY ARE REPUGNANT.

Specifically involved in this discussion are Assignments of Error Nos. 1, 2, 3, *4, 5, 6, 7, 8* and 9, with particular emphasis upon the abridgment of freedom of contract (Assignment of Errors Nos. 4, 5 and 6 relating to freedom of contract, and the resulting taking of the property of employers without just compensation and without due process of law as indicated in Assignments of Error Nos. 1, 2, 3, 7, 8 and 9).

Abridgment of Privileges or Immunities Under Federal Constitution

Section 206.21 in conjunction with Sections 210.11 and 610.19 of Minnesota Statutes Annotated, as interpreted by the Supreme Court of the State of Minnesota are repugnant to, and in violation of, the following provision of Section 1 of the Fourteenth Amendment to the Constitution of the United States:

> "No State shall . . . make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

Re Freedom of Contract

That freedom of contract is one of the privileges or immunities to which the foregoing United States constitutional provision relates is shown by the following decisions of the United States Supreme Court:

> *Lochner* v. *New York*, 198 U. S. 45, 56-57, 49 L. Ed. 937, 941, holding the limitation of employment in

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bakeries to sixty hours a week and ten hours a day, attempted by New York Laws 1897, c. 415, Art. 8, Sec. 110, to be an arbitrary interference with the freedom to contract guaranteed by the Fourteenth Amendment to the Constitution of the United States;

Adair v. *United States*, 208 U. S. 161, 52 L. Ed. 436, 442, 28 Sup. Ct. Rep. 277, citing *Lochner* v. *New York, supra;*

Mullen v. *Oregon*, 208 U. S. 412, 52 L. Ed. 551, recognizing that the general right to contract in relation to one's business is part of the liberty of the individual protected by the 14th Amendment to the Federal Constitution, though, of course, subject to the right of a state to impose some restrictions.

Chicago, B. & Q. R. Co. v. *McGuire*, 219 U. S. 549, 55 L. Ed. 328, 338, recognizing that contracts must be subject to the essential authority of government to maintain peace and security and to enact laws for the promotion of the health, safety, morals and welfare of those subject to its jurisdiction, the court, however, says:

> "The possession of this power by government in no manner conflicts with the proposition that, generally speaking, every citizen has a right freely to contract for the price of his labor, services or property."

Prudential Ins. Co. v. *Check*, 259 U. S. 530, 536, 66 L. Ed. 1044, 1051, wherein it is said:

> "That freedom in the making of contracts of personal employment, by which labor and other services are exchanged for money or other forms of property, is an elementary part of the rights of personal liberty and private property not to be struck down directly, or arbitrarily interfered with, consistently with the due process of law guaranteed by the 14th Amendment, we are not disposed to question. This Court has affirmed the principle in recent cases. *Adair* v. *United States*, 208 U. S. 161, 174, 52 L. Ed. 436, 442, 28 Sup. Ct. Rep. 277, 13 Ann. Cas. 764;

Coppage v. *Kansas*, 236 U. S. 1, 14, 59 L. Ed. 441, 446, L. R. A. 1915 C, 960, 35 Sup. Ct. Rep. 240."

The Facts

The facts established at the trial make clear that appellant was an employer of Thomas D. Kennedy, who was employed at the rate of $1.75 per hour in appellant's Parts Depot in St. Paul, Minnesota (R. 15-16); that on November 4, 1952, an election day, said Kennedy absented himself from his work for two hours in the forenoon of said election day to vote (R. 16-17). He lived only two blocks from the voting precinct, and had available one hour before reporting for work and three hours after getting home from work in which to vote outside of working hours. However, he left work to vote at 10 o'clock in the forenoon and took two hours for that purpose (R. 16-17). His work shift began at 8:00 a. m. and terminated at 4:30 p. m. (R. 16-17, 36).

Kennedy and all other employees of appellant were employed at the Parts Depot under a Union contract with appellant, which provided as follows:

"Article XVIII

"Voting

"Employees shall be allowed the necessary time off without pay to vote in any Federal, State, or Municipal election." (R. 36, f. 3; 37, f. 1).

In accordance with the terms of said Union contract, appellant deducted $3.50 from Kennedy's wages for the period of such absence from his work. (R. 38, f. 3). For this act of deducting $3.50 from the wages of Kennedy, appellant was arrested, charged with committing a misdemeanor pursuant to Sections 206.21 and 210.11, Minnesota Statutes Annotated, and after trial was convicted and fined $100 pursuant to Section 610.19 of said statutes. (R. 1, 2, 3; 4-32; 54, 76 and 77).

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In addition to Kennedy, eighteen other forenoon employees absented themselves from their work at the Parts Depot to vote during the forenoon of said election day, November 4, 1952 (R. 38, f. 3 to 41, f. 1).

All Federal Constitutional Questions Subject to Review

Appellant was thus directly and adversely affected and injured by the enforcement of said Sections 206.21 and 210.11, Minnesota Statutes Annotated, and was therefore entitled to raise constitutional objections to the enforcement and applications of said statutes in its own behalf.*

Furthermore, since by the terms thereof said Section 206.21 in conjunction with Sections 210.11 and 610.19, Minnesota Statutes Annotated, have a statewide application and effect (as they did on appellant) on all other members of the class of employers to which appellant belongs, viz., every person or concern (individual, partnership, association or corporation, and the officials or agents of each thereof) who (as did appellant) employs one or more persons entitled to vote at an election in the State of Minnesota, appellant by this appeal may seek review of the constitutional questions involved on behalf of, and as they affect, all members of the class of employers against which such statutes are directed and of which appellant is itself a member. Included in this category are the many thousands of housekeepers, hotel or innkeepers, store-keepers, draymen, gardeners, dairymen, farmers, carriers, merchants, warehousemen, professional offices, manufacturers, and all other employers of such labor, whether they constitute large or small enterprises.*

Statutory Provisions Read Into Contracts

It is elementary that statutes such as Sections 206.21 and 210.11, Minnesota Statutes Annotated, if valid, must

* See authorities cited supra.

be read into and treated by implication as a term or condition of the employment contract between affected employers and employees. This rule is applied by Federal courts, as shown by the following:

> The laws which subsist at the time and place of making a contract enter into and form a part of it, as if they were expressly referred to or incorporated in its terms.—
>
> *Edwards* v. *Kearzey*, 96 U. S. 595, 24 L. Ed. 793.

> The construction of a state law by the highest State court is as much a part of the law as though embodied in it, so far as contract obligations incurred under it are concerned.—
>
> *Louisiana ex rel. Southern Bank* v. *Pillsbury*, 105 U. S. 278, 26 L. Ed. 1090;
>
> *Ennis Water Works* v. *Ennis*, 233 U. S. 652, 34 S. Ct. 767, 58 L. Ed. 1139.

That this is the governing rule is well stated by the Supreme Court of California in the case of *Lockheed Aircraft Corporation* vs. *Superior Court of Los Angeles County, et al.*, (June 26, 1946), 28 Cal. 2d, Adr. 496, 166 A. L. R. 701, 171 P. (2d) 21, involving a statutory provision to the effect that no employer shall make, adopt or enforce any rule, regulation, or policy forbidding or preventing employees from engaging or participating in politics or from becoming candidates for public office, or controlling or directing or tending to control or direct the political activities or affiliations of employees. On the point here involved the Court says:

> "The contract of employment must be held to have been made in the light of, and to have incorporated, the provisions of existing law. *Stockton Sav. & Loan Bank* v. *Massanet*, 18 Cal. (2d) 200, 206, 114 P. (2d) 592, 593; *In re Ounjuian's Estate and Guardianship,*

> 4 Cal. (2d) 659, 661, 52 P. (2d) 220, 102 A. L. R. 1106; *Mott* v. *Cline*, 200 Cal. 434, 446, 253 P. 718. Hence, upon violation of the section, an employee has a right of action for damages for breach of his employment contract."

The California statute referred to provided that "nothing in this chapter shall prevent the injured employee from recovering damages from his employer for injury suffered through a violation of this chapter". The above quoted statement was made by the Court in refutation of the defendant's contention that, since a violation of the statute was made a misdemeanor, the statute was penal in character and did not create any civil right of action. The Court pointed out that the argument ignored the provision concerning recovery of damages by the employer for a violation of the statute.

Indicated Construction of Employment Contract

Similarly to the California statute just referred to a violation of Sections 206.21 and 210.11, Minnesota Statutes Annotated, is made a misdemeanor punishable pursuant to Section 610.19 of said statutes, by fine or imprisonment. Likewise, pursuant to elementary principles, if said Sections 206.21 and 210.11 are valid, they become incorporated as terms or conditions of the Union Employment contract with appellant, and thus superseded Article XVIII thereof, which provided:

> "Employees shall be allowed the necessary time off *without pay* to vote in any Federal, State, or Municipal election,"

to the extent to which same applied to forenoon workers entitled to vote. Of course, the statute does not apply to workers entitled to vote whose work period falls in any other portion of the day or night than the forenoon of an

election day. Hence, Article XVIII remains in effect as to all workers not employed during such forenoon period of an election day.

It is therefore logical to assume that as to forenoon employees entitled to vote, the Union Employment contract would necessarily be construed in effect as providing that—

> if any employee entitled to vote on an election day shall absent himself from his work during the forenoon of such day to vote, then (regardless of the loss by the employer (appellant) during said forenoon period, of the services of such employee) the employer will pay full wages or salary without penalty or deduction for the loss of services due to such absence from his work on the part of the employee.

It appears reasonable therefore to assume that under such conditions the obligation to pay for such time constitutes a "debt" of the employer to the employee for which a civil action would lie for its recovery.

This conforms to the definition of the term "debt" as declared by the Minnesota Supreme Court in *Wojahn* v. *Halter,* 229 Minn. 374, 39 N. W. (2d) 545, viz.:

> "The term 'debt' as used in Minnesota Constitution, Article 1, paragraph 12, has been limited to obligations to pay money or something due and owing from one to another arising out of contract, express or implied."

If this be correct reasoning, then Section 206.21 in conjunction with Sections 210.11 and 610.19, Minnesota Statutes Annotated, would be void because in direct conflict with Section 12 of Article 1 of the Bill of Rights of the Constitution of the State of Minnesota, which provides:

> "Section 12. No person shall be imprisoned for debt in this State. . . ."

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Minnesota Supreme Court's View

In the case at bar, however, when the question of such claimed unconstitutionality was submitted to it, the Minnesota Supreme Court surprisingly held that the amount of wages withheld, viz., $3.50, was not a debt of appellant as employer to Kennedy as employee, but, on the contrary (though conceding that the amount of such withheld wages would be recoverable by the employee in an action on contract) inconsistently (it is submitted) held that it constituted a "statutory obligation" and therefore the constitutional provision against imprisonment for debt had no application.

This decision is further inconsistent with sound reasoning, it is submitted, because the amount of withheld wages is not a tax or a fine due the State (which has by virtue of Section 210.10, M. S. A. declared such withholding to be a misdemeanor and punishable under Section 610.19, M. S. A. by fine or imprisonment) but is actually a debt arising from the implied promise or contract of the employer to pay full wages, without deduction, if the employee absents himself to vote during the forenoon of an election day. As such the employee may recover the withheld amount, if he chooses, in a civil action. On the other hand, such employee is not compelled to vote at all, or he may choose to vote outside of working hours, or, at any rate, not during the forenoon, in either of which events no liability on the part of the employer could arise under said statutes. Since these choices are optional with the employee his election of the option to follow a course that would not involve exercising the privilege granted by Section 206.21, M. S. A. to absent himself from his work in the forenoon of an election day to vote, is a personal choice that waives the right or privilege extended by the statute. It is a waiver that the State of Minnesota has

no power to prevent for voting is not compulsory, but is a privilege of persons qualified to vote granted by Section 1 of Article 7 of the Constitution of the State of Minnesota, and, as stated by the Minnesota Supreme Court in *State* v. *Erickson*, 119 Minn. 152, 137 N. W. 385, such constitutional provision defines the qualification of electors (voters), and the conditions of eligibility to office, which cannot be changed or added to by statute.

Effects of Minnesota Supreme Court's Interpretation

The effect of the above referred to interpretation of said statutory provisions is to render void Article XVIII (R. 36, f. 3 and 37, f. 1) of the Union Employment contract to the extent that it applies to employees entitled to vote who choose to absent themselves from their work to vote during the forenoon of any election day.

Stated another way, such decision in the case at bar operates against all members of the class of employers, to which appellant belongs, who employ employees entitled to vote, whose work period, from which they may choose to absent themselves to vote on any election day, is during the forenoon of such day, by abridging their freedom of contract with such employees. This freedom of contract constitutes one of the privileges or immunities of citizens of the United States, as heretofore shown.

Another obvious effect of the above decision is the compulsory subsidizing by appellant, as well as by all other members of the class of employers who employ employees entitled to vote at any election day whose work period is in the forenoon of such day, and who choose to absent themselves from their work during such forenoon period to vote, of the voting of the special group of employees (through payment for services not performed) while the employee is absent in the forenoon to vote.

This results also by virtue of the Minnesota Supreme

Court's decision that employees cannot waive the statutory privilege accorded them, which by construction is read into every contract of employment of forenoon workers (under which such forenoon workers may absent themselves from their work in the forenoon of an election day) requiring payment by the employer for the time during which the employee absents himself in the forenoon of an election day to vote, though no services are performed for the period of such absence. By this compulsory payment for work or services not performed the employer of forenoon workers, in effect, rewards such forenoon employees for absenting themselves at his expense, to vote. No one else in Minnesota (other than employers of employees entitled to vote whose work period includes the forenoon of any election day, and who absent themselves from their work to vote in the forenoon of such day) is required to subsidize voters.

Here then is Section 206.21 in conjunction with Sections 210.11 and 610.19 of Minnesota Statutes Annotated, which, as construed by the Minnesota Supreme Court, not only abridges freedom of contract between the employers and employees therein referred to, but also deprives each such employer of his or its property without just compensation and without due process of law, contrary to Section 1 of the Fourteenth Amendment of the Constitution of the United States.

Re Waiver

The purpose of Section 206.21, Minnesota Statutes Annotated, in conjunction with Sections 210.11 and 610.19 thereof, is to enable employees to absent themselves from work to vote, if they desire, during the forenoon of an election day. The provision that this may be done "without penalty or deduction from salary or wages on account of such absence", it is contended, is a personal privilege extended to the employee who is employed *during the fore-*

noon of an election day, that may be and is often waived. For example, the privilege is actually waived if the employee chooses not to vote or, if he elects to vote outside of working hours.

In the case at bar, the privilege was waived in express terms by Article XVIII of the Union Employment contract under which Kennedy was employed that provided:

> "Employees shall be allowed the necessary time off to vote in any Federal, State or Municipal election."

The employees who were parties to it, in effect, very clearly expressed their intention to waive the privilege of the statutes (with notice of which they were charged) to demand pay for time taken out of their work period to vote.

A waiver is the intentional relinquishment of a known right.

56 Am. J., "Waiver", Section 2;

Parsons, Rich & Co. v. *Lane*, 97 Minn. 98, 104, 106 N. W. 485.

While one cannot waive a public obligation created by statute, he may waive a statutory requirement the purpose of which is to confer a private right or benefit.

56 Am. J., "Waiver", Section 7 and cases cited.

As pointed out above, these statutes, so far as the employees referred to are concerned create no public obligation. They are not required to vote. The right to vote is a privilege and the voter may choose when he will vote or whether he will vote. There is nothing in these statutes that create on the part of the employee any public obligation. The statutes merely confer upon such employees a private right or benefit.

Statutory rights may be waived or surrendered, in whole or in part, by the party to whom or for whose benefit

they are given, if he does not thereby destroy the rights and benefits conferred upon or flowing to another in or from such statute or other legal or equitable source.

Northern Pac. R. Co. v. *Raymond*, 5 Dak. 356, 40 N. W. 538, 1 L. R. A. 732;

Eaton v. *Osborne*, 177 N. C. 667, 103 S. E. 388, 13 A. L. R. 1204 (Personal defense of usury);

Davis v. *La Crosse Hospital Assn.* (Wis.), 99 N. W. 350 (Building contractor may waive his right to a statutory lien by agreeing not to enforce it);

Dunbar v. *Farnum* (Vt.), 196 Atl. 237, 114 A. L. R. 996 (Benefit of statute of frauds may be waived);

56 Am. J., "Waiver", Sections 7, 8, (examples cited) including such personal privileges as exemption from military service; from civil arrest; from execution; from right to redeem from mortgage foreclosure sale, etc.).

Where (as in the case at bar) a statute (Sections 206.21 and 210.11, M. S. A.) specifically prohibits and penalizes a certain act or acts by the members of one class, viz., certain employers, for the purpose of extending certain privileges to the members of another class, viz., those employees (of such employers) entitled to vote at any election, whose work period is in the forenoon of such election day and who choose to absent themselves from their work during the forenoon of such election day, a statutory construction should not be adopted which attributes to the legislature an intent to bring about a consequence that is inconsistent with the purpose for which the law was enacted.

Obviously, it was never the purpose of the statutes here involved to compel employees entitled to vote to do so in the forenoon of election days. All that the statutes purport to do (as far as the employees are concerned) is to extend to each employee entitled to vote and whose

work period includes the forenoon of an election day, the *personal privilege* "to absent himself from his work for that purpose during the forenoon of each election day, without a penalty or deduction from salary, or wages on account of such absence" (Section 206.21, M. S. A.).

In the case at bar, the statute imposes no obligation on the employees concerned to vote or do anything. The obligations and penalties of the statute for the violation of provisions of Section 206.21, M. S. A. are declared in Section 210.11 M. S. A. (making it a misdemeanor on the part of the employer alone punishable as such by fine or imprisonment), and no other consequences of a violation are declared. It is repeated that the employee is not required by the statute to vote either in the forenoon of an election day or at all. The personal privilege granted the employee "to absent himself from his work for that purpose during the forenoon of each election day, without a penalty or deduction from salary or wages on account of such absence" (Section 206.21, M. S. A.) is so obviously (as to such employee) not a public purpose or policy that it plainly indicates that the legislature did not intend to limit the employee in his right to exercise the privilege or to waive it as he saw fit. His act in waiving the privilege is not void and ineffective.

This is shown by the case of *In re Peterson*, 230 Minn. 478, 42 N. W. (2d) 59, involving the question of the validity of a will drawn by a layman in direct violation of M. S. A. 481.02, which prohibits and penalizes as a misdemeanor the act of an unlicensed practitioner in preparing a will for another in which the Minnesota Supreme Court said at page 483:

> "If an act is expressly forbidden and a penalty is imposed for a violation, the intent of the legislature is the controlling factor in determining to what ex-

tent, in order to preserve the requirements of public policy, contracts and other instruments made in connection with such act of violation are to be held illegal, if at all. 3 Sutherland, Statutory Construction (3 Ed.), Section 5608. An inference of invalidity does not necessarily follow from the fact that a statute prescribes a penalty. *De Mers* v. *Danuts*, 39 Minn. 158, 39 N. W. 98. Each statute must be judged by itself as a whole. *Soloman* v. *Dreschler*, 4 Minn. 197 (278); *Bowdilch* v. *New England Mut. Life Ins. Co.*, 141 Mass. 292, 4 N. E. 798, 55 Am. R. 474. In construing a statute where the language is not explicit and admits of construction, in determining legislative intent the courts will consider the occasion and the necessity for the law, the mischief to be remedied, the object to be attained, and the consequences of a particular interpretation, M. S. A. 645.16."

Again, at page 485, after referring to the rule under which acts may be declared unlawful and void, said court quotes from the *De Mers* case, *supra*, in part as follows:

"This rule is not, however, without qualification. The question is one of interpretation of the legislative intention. *The imposing of a penalty does not necessarily give rise to an implication of an intention that, where an act is done which subjects a party to the penalty, the act itself shall be void, and of no legal effect;* and if it seems more probable, from the subject and the terms of the enactment, and from the consequences which were to be anticipated as likely to result from giving effect to the penal law, that it was not the intention of the legislature to make the transaction void, but only to punish the offending party in the manner specified, the law should be so construed. . . . *The fact that no penalty, forfeiture, or disability is declared with respect to purchaser, under any circumstances, is worthy of being considered* in this connection."

Again, the Court says, at page 487 of the last quoted decision:

> "Where the legislature has carefully designated the *offense*, the *offender*, and the *penalty* and *has made specific provisions to insure enforcement*, the inference is that the legislature has dealt with the subject completely and did not intend, in addition thereto, that drastic consequences of invalidity should be visited upon the victim of the offender by mere implication." (citing cases).

It has been heretofore pointed out, and it is submitted that there can be no valid distinction between the exercise by an employee of a waiver of the privilege extended by said Section 206.21, M. S. A., by either of the following methods, viz.,

(1) By refraining altogether from voting; or
(2) By refraining from absenting himself from his work during the forenoon to vote; or
(3) By voting at a time that does not come during his working period;

and

(4) By including, as was done in the case at bar, the following,

or a provision of a similar purport in his employment contract, viz.:

> "Employees shall be allowed the necessary time off without pay to vote in any Federal, State or Municipal election."

Public Policy Not Involved

It has been heretofore pointed out that public policy so far as concerns the employees referred to in said statutes is concerned is not involved. In holding against this contention, the Supreme Court of Minnesota overlooked the

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obvious fact that the statutes involved only offered as an inducement to each employee entitled to vote, who might be employed in the forenoon of any election day, the privilege (as contrasted to duty) "to absent himself from his work" to vote "during the forenoon of each election day, without a penalty or deduction from salary or wages on account of such absence."

Said court passes over or ignores the special character of the statutes in their extension (without creating a duty to vote either in the forenoon or at any other hour of an election day) of the privilege therein provided for a select few, namely, forenoon workers entitled to vote, to the exclusion of all others.

As a statute of that special character, which does not make compulsory the taking of time off to vote by the privileged forenoon employee, no good reason appears (as previously pointed out) for differentiating between an advance waiver of the statutory privilege by contract than by the exercise by the worker of the right which he undoubtedly possesses to decide for himself whether to take advantage of the special privilege or not. *Public policy* in this phase of the matter *is not involved.*

As a statute for the benefit of the special group of forenoon employees entitled to vote, the contract provision is not thereby prohibited, nor is it inconsistent therewith, so far as such employees are concerned, and as to employees engaged during other hours of election days, the statutes have no application. All such employees may lawfully enter into an employment contract containing the provision above quoted.

In support of the foregoing contention that no public policy is involved to affect the exercise by the special group of employees to which the privileges of said statutes are extended, the following principles as stated in 12 American Jurisprudence, on the subject of "Contracts" at Section

166, entitled "Waiver of Statutory Protection" are pertinent:

> "Closely related to the legality of agreements in violation of statute is the question whether the protection of a statute may be waived by agreement. The answer to the latter question depends altogether upon the nature of the statute. An agreement is not necessarily against public policy because it waives a constitutional or statutory right or changes an established rule of law. Generally, parties may agree to waive statutory rights unless a question of public policy is involved. Whether the effect of any specific statute can be voided by agreement depends upon whether the statute is one enacted for the protection of the public generally, or whether it is designed solely for the protection of the rights of individuals, in which case it may be waived."

Any interpretation of these statutory provisions in the case at bar, than that Section 206.21, M. S. A. grants a personal privilege to the special group of employees to seek pay for time taken out to vote and is a proper subject of waiver by contract with the employer, is inconsistent with the spirit of the following enactments:

Section 211.14, M. S. A., which provides:

> "It shall be unlawful for any person to pay another for any loss or damage due to attendance at the polls, or in registering. . . ."

and the National Labor Relations Act as amended by Labor Management Relations (Taft-Hartley) Act, 1947, U. S. Code Annotated, Title 29, Ch. 7, Sub-Ch. II, Sec. 158, Sub-Div. (b)(6), directed against, so-called, feather-bedding, and declaring it to be an unfair labor practice for a labor organization or its agents:

> "(6) to cause or attempt to cause an employer to pay or deliver any money or other thing of value, in

the nature of an exaction for services which are not to be performed."

Re Taking of Property Without Just Compensation and Without Due Process of Law

Section 1 of the Fourteenth Amendment to the Constitution of the United States provides that:

> "No State shall . . .; nor shall any State deprive any person of life, liberty, or property without due process of law. . . ."

Implicit in this constitutional provision is the principle that no private property shall be taken without just compensation.

State v. *Harper,* 182 Wis. 148, 196 N. W. 451, 33 A. L. R. 269 (Due process of law under the 14th Amendment to the U. S. Const., includes compensation for property taken);

Holden v. *Hardy,* 18 S. Ct. 383, 387, 169 U. S. 366, 42 L. Ed. 780—The words "due process of law" forbid that one man's property or right of property shall be taken for the benefit of another, or for the benefit of the public without just compensation;

Chicago, B. & Q. R. Co. v. *City of Chicago,* 17 S. Ct. 581, 584, 166 U. S. 226, 41 L. Ed. 979;

Chicago, B. & Q. R. C. v. *People of State of Illinois, ex rel. Grimwood,* 26 S. Ct. 341, 350, 200 U. S. 561, 50 L. Ed. 596, 4 Ann. Cas. 1175;

See: *Day-Brite Lighting, Inc.* v. *State of Missouri* (March 3, 1951), 342 U. S. 421, 96 L. Ed. 469, 72 S. Ct. Rep. 405, which involved a so-called, pay-while-voting statute, wherein the U. S. Sup. Ct., expressly recognized that "a semblance of substance in the constitutional objection to Missouri law is that the employer must pay wages for a period in

> which the employee performs no services", and declared further that: "The judgment of the Legislature that time out for voting should cost the employee nothing is indeed a *debatable one.* It is indeed conceded by the opposition to be such."

The foregoing rule of just compensation for property taken involves due consideration of the loss and damage incurred by the property owner.

As stated in *Minneapolis-St. Paul Sanitary District* v. *Fitzpatrick,* 201 Minn. 442, 277 N. W. 394, the market value of property taken in condemnation is not measured by the benefits to, or needs of, the condemnor. The question is, what has the owner lost? Not, what has the taker gained.

In the case at bar, appellant, as employer, had a contractual property right to the services of the employee Kennedy. If compelled to pay Kennedy for the time during which he absented himself from his work to vote, appellant lost not only the $3.50 of wages covering such period of absence, but also lost the value of Kennedy's services. This additional element of loss might be special and substantially over and above the $3.50 of wages for which no services were rendered. It will be recalled (R. 38 to 41) that, in addition to Kennedy, about eighteen other forenoon employees also absented themselves from their work to vote in the forenoon of November 4, 1952, an election day. This serves to indicate how serious the loss and damages in a plant could be, if the work stoppage caused a slow-down or shut-down of operations. Each employer in the same class as appellant would, of course, have a different situation to face and effects would vary, but special loss and damage could be substantial over and above the wages paid for the time of absence of each employee from his work.

While Section 206.21 in conjunction with Sections 210.11 and 610.19 of Minnesota Statutes Annotated, thus constitute a compulsory subsidy of the special group of employee voters privileged thereby to absent themselves from their work and to receive wages for the time of such absence, it does not constitute a so-called general labor law and is not justifiable as such. It does not determine rate of pay of workers nor hours of work. All it does is benefit the special group of workers above referred to. Its purpose, as has heretofore been shown, is to offer a special group of employees the inducement (extended to no other workers) to absent themselves from their work in the forenoon of any election day to vote, by compelling the employer to pay for the period of absence of each employee in the forenoon to vote on pain of being guilty of a misdemeanor and subject to fine or imprisonment should he fail to do so.

It is submitted therefore that not only do Sections 206.21 in conjunction with Sections 210.11 and 610.19 of Minnesota Statutes Annotated, as construed and applied by the Supreme Court of the State of Minnesota, abridge freedom of contract and deny due process of law to appellant and all other members of the same class of employers, as guaranteed by Section 1 of the Fourteenth Amendment to the Constitution of the United States to the extent shown above, but such due process of law and the equality provisions of said Fourteenth Amendment are further violated as hereinafter shown.

Further Comment Concerning the Objectionable Subsidy Feature of Section 206.21, M. S. A.

While recognizing that courts should go far to sustain legislation designed to relieve employees from obligations to private employers which would stand in the way of their

duty as citizens, Justice Jackson of the United States Supreme Court in the case of *Day-Brite Lighting, Inc.* v. *State of Missouri* (March 3, 1951), 342 U. S. 421, 96 L. Ed. 469, 72 S. Ct. Rep. 405, makes the following pertinent and illuminating comments on the objectionable subsidy feature of a pay-while-voting statute of Missouri:

> "But there must be some limit to the power to shift the whole voting burden from the voter to someone else who happens to stand in some economic relationship to him. Getting out the vote is not the business of employers, indeed, I have regarded it as a political abuse when employers concerned themselves with their employees' voting. It is either the voter's own business or the State's business. I do not question that the incentive which this statute offers will help swell the vote; to require that employees be paid time and a half would swell it still more, and double time would do even better. But does the success of an enticement to vote justify putting its cost on some other citizen?
>
> "The discriminatory character of this statute is flagrant. It is obvious that not everybody will be paid for voting and the 'rational basis' on which the State has ordered that some be paid while others are not eludes me. If there is a need for a subsidy to get out the vote, no reason is apparent to me why it should go to one who lives 200 feet from his polling place, but not to a self-employed farmer who may have to lay down his work and let his equipment idle for several hours while he travels several miles over bad fall roads to do his duty as a citizen. If he has a hired man, he must also lose his hand's time and his pay. Perhaps some plan will be forthcoming to pay the farmer by requiring his mortgagee to rebate some proportion of the interest on the farm mortgage if he will vote. It would not differ in principle. But no way occurs to me by which the doctor can charge some patient, or the lawyer some client for the call he could not receive while he was voting."

Federal Decisions Recognize Necessity for a "Public Purpose" Reasonable Suitability & Equality to Meet Constitutional Requirements

Judicial and legislative acts of a state, hostile in their purpose or mode of enforcement to the authority of the national government, or which impair the rights of citizens under the Constitution of the United States, are invalid and void.

Taylor v. *Thomas,* 22 Wall. 479, 22 L. Ed. 789.

The Constitution of the United States is the supreme law of the land to which all statutes must conform.

Railroad Retirement Bd. v. *Alton R. Co.,* 295 U. S. 330, 55 S. Ct. 758, 79 L. Ed. 1468.

The prohibitions of the 14th Amendment, against depriving any person of life, liberty, or property without due process of law, or denying the equal protection of the laws, extend to all acts of the state, whether through its legislative, its executive, or its judicial authorities.

Scott v. *McNeal,* 154 U. S. 34, 14 S. Ct. 1108, 38 L. Ed. 896;

Standard Computing Scale Co. v. *Farrell,* 249 U. S. 571, 39 S. Ct. 380, 63 L. Ed. 780;

Hodges v. *U. S.,* 203 U. S. 1, 27 S. Ct. 6, 51 L. Ed. 65.

Though the obligations of contracts must yield to a proper exercise of the police power and vested rights cannot inhibit proper exertion of the power, it must be exercised for an end which is in fact public, and the means adopted must be reasonably adopted to the accomplishment of that end and must not be arbitrary or oppressive.

Treigle v. *Acme Homestead Assn.,* 297 U. S. 189, 56 S. Ct. 408, 101 A. L. R. 1284, 80 L. Ed. 575.

While every contract is made subject to the implied condition that its fulfillment may be frustrated by a proper exercise of the police power, in order to have this effect the exercise of the power must be for an end which is in fact public and the means adopted must be reasonably adopted to that end.

Indiana ex rel. Anderson v. *Brand*, 303 U. S. 95, 58 S. Ct. 443, 113 A. L. R. 1482, 82 L. Ed. 685.

Applying the governing principles above stated, it is clear that the enforced subsidy resulted from the construction of Section 206.21 in conjunction with Sections 210.11 and 610.19, M. S. A., by the Supreme Court of the State of Minnesota, and that the decision fails to recognize that under the evidence and matters of which cognizance must be taken these statutes both lack and fail of a public purpose in that provision is made merely to grant a special privilege to a special group (forenoon workers) to induce them to vote while the ostensible purpose of the statutes is to induce employed workers generally to vote. Furthermore, it unreasonably discriminates and applies unequally to those members of the same class against which it is directed, in this that, while on election day the polls are open for thirteen hours, and employees entitled to vote are employed on variable work shifts that overlap this voting period, nevertheless the statute extends the privilege of employed workers to absent themselves to vote without penalty or deduction of salary or wages because of such absence, only to those workers employed during the forenoon of election days, and thus unreasonably discriminates against all such employees whose work period falls in that portion of the time the polls are open other than the forenoon. This, of course, means that employers of such workers are in consequence unlawfully compelled to subsidize the specially privileged group of employees

on a basis that for the same applicable reasons as indicated above have the vice of imposing unreasonable, unequal, discriminatory charges against them that cannot be justified as proper costs of operating their business.

Furthermore, the "ostensible" public purpose of inducing employed workers generally to vote is nullified and the statute becomes a grant of a special privilege extended to forenoon employees only, which is a private and not a public purpose.

POINT II. AS CONSTRUED AND APPLIED BY THE SUPREME COURT OF THE STATE OF MINNESOTA, SECTION 206.21, IN CONJUNCTION WITH SECTIONS 210.11 AND 610.19, OF MINNESOTA STATUTES ANNOTATED, ARE SO DISCRIMINATORY, UNREASONABLE AND UNEQUAL IN THEIR APPLICATION TO APPELLANT AND TO ALL PERSONS OF THE SAME CLASS THEREIN DESIGNATED AS TO BE REPUGNANT TO AND TO CONSTITUTE AN UNLAWFUL EXERCISE OF THE POLICE POWER OF THE STATE OF MINNESOTA AND REPUGNANT TO AND VIOLATIVE OF SECTION 1 OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

Section 1 of the Fourteenth Amendment to the Constitution of the United States, among other things, provides:

> "No State shall . . .; nor shall any State deprive any person of life, liberty, or property without due process of law. Nor deny to any person within its jurisdiction the equal protection of the laws."

Ostensible Objective and Purpose of Statutes Fail

Heretofore in this brief we have referred to the ostensible objective and purpose of Sections 206.21 and 210.11, Minnesota Statutes Annotated, as being to induce employed workers to vote by extending to those only who are employed in the forenoon of any election day the privilege of absenting themselves from their work in such forenoon period without a penalty or deduction from salary or wages on account of such absence. Such an objective might

qualify as being for a public purpose (*i.e.*, for public benefits or promotion of the general welfare as opposed to restricted benefits), but such statutes do not qualify as being for a public purpose when in terms the benefits are restricted to a privileged few.

> *Green* v. *Frazier*, 44 N. D. 395, 176 N. W. 11, 17—(a public purpose or public business has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents within a given political division, as, for example, a state, the sovereign powers of which are exercised to promote such public purpose or public business);
>
> *Briggs* vs. *City of Raleigh*, 195 N. C. 223, 141 S. E. 597, 599—(Term "public purpose" is not to be construed narrowly, and it is not necessary, in order that use may be regarded as public, that it should be for use and benefit of every citizen in community, but it may be for inhabitants of restricted locality, but use and benefit must be common and not for particular persons, interests or estates.)

In the case at bar, the statute expressly restricts its declared benefits to those persons entitled to vote who happen to be employed in the forenoon of an election day, and, notwithstanding the fact that the polls are open to all qualified voters for thirteen hours and the average work shift may be said to be only eight hours in duration (thus in most cases giving workers, during the period when the polls are open, at least five hours in which to vote without being absent from their work), nevertheless the statutes here involved granted to a privileged few, viz., those voters employed during the forenoon only, the right to absent themselves to vote during the forenoon "without a penalty or deduction from salary or wages on account of such ab-

sence." This special privilege is not extended to voters who are employed during the afternoon or such portions of the night the polls remain open and wish to vote during such working hours. Certainly the votes of these forenoon workers are of no more importance than the votes of the others, nor are they entitled to be so subsidized while the others receive no subsidies. Why then should the employers of "forenoon" workers be compelled to subsidize their voting, when no other persons or concerns are required to subsidize the voting of anybody?

It is submitted that the constitutional requirement of equal treatment of all members of the same class, *i.e.*, all who are similarly situated, which obviously includes, as heretofore pointed out, employers of employees entitled to vote at an election, applies to the case at bar. Section 206.21, Minnesota Statutes Annotated, is thus established as one that falls short of a *bona fide* public purpose and serves merely to extend its specially declared privileges to workers entitled to vote at an election, who are in a position to absent themselves from their work for that purpose during the forenoon of an election day if they so choose. A real or *bona fide* public purpose would not select a special group of workers on whom to bestow benefits not extended to any others.

In other words, the ostensible object of this statute is to induce employed workers entitled to vote to do so, but it limits its benefits to the privileged workers only who are employed in the forenoon of an election day, and thus fails or falls short of its ostensible object.

Every voter, under Minnesota election laws, has 13 hours during which the polls are open, either from 7:00 a. m. to 8:00 p. m. or from 8:00 a. m. to 9:00 p. m. (R. 42, f. 3 to 43, f. 1). In the case at bar, the polls in St. Paul, Minnesota, were open from 7:00 a. m. to 8:00 p. m. (R. 43, f. 1).

Workers entitled to vote have varying working hours,

for example, some work in the forenoon only, others in the afternoon, others at night, others work on shifts (some, divided as to time into three shifts, viz., 1st shift from 7:00 a. m. to 3:30 p. m.; 2nd shift from 3:00 p. m. to 12:00 M.; and 3rd shift from 12:00 M. to 7:00 a. m. (R. 41, f. 1 to 42, f. 1) and others, as in the case at bar, in two shifts, the 1st from 8:00 a. m. to 4:30 p. m. and the 2nd from 4:30 p. m. to 12:30 a. m. (R. 36, f. 2). Thomas D. Kennedy worked on the first shift, from 8:00 a. m. to 4:30 p. m. (R. 38, f. 1-2); and lived only 2 blocks from his polling place (R. 16, f. 3) but took 2 hours off after reporting for work to vote in the forenoon (R. 16-17), though he had an hour before reporting for work and 3 hours after going home from work in which he could have voted outside of working hours.

It is worthy of note that on the above 3-shift division of work periods only the 1st shift workers would receive any benefit from the statute in question, and this is true in the case at bar, for only the 1st shift workers receive any benefits thereunder.

It is submitted that a forenoon worker's vote is not more important than a vote cast at some other period of the day. But the statute in question operates unequally and is discriminatory to an unreasonable extent as it affects both employers and employees.

Statute Does Not Provide Free Voting Safeguards

A reference to the following Sections of Minnesota Statutes Annotated, viz.:

Sec. 205.36 Voters not to be molested.

Sec. 210.03 Bribery forbidden and punished.

Sec. 210.04 Against advancing money unlawfully.

Sec. 210.05 Against improperly influencing or coercing voters, which is made a gross misdemeanor.

Sec. 210.09 Prohibiting certain solicitations.

Sec. 210.11 Refusing employees election privileges.

Sec. 210.20 Forbidding contributions by corporations.

Sec. 211.01 Definitions and construction of terms.

Sec. 211.02 Legal expenses.

Sec. 211.10 Shall not induce person to become a candidate.

Sec. 211.11 Treating by candidates prohibited.

Sec. 211.12 Undue influence by candidates prohibited.

Sec. 211.13 Making wagers prohibited.

Sec. 211.14 "It shall be unlawful for any person to pay another for any loss or damage due to attendance at the polls or in registering. . . ."

Sec. 211.24 Prohibiting influencing voters.

Sec. 211.27 Prohibiting corporations from contributing to political campaigns.

Sec. 211.28 Violations; Penalties. . . .

Sec. 211.29 Violation by office to be construed as violation by corporation.

Sec. 211.30 Aiding violation a gross misdemeanor.

Sec. 211.31 Prosecution when made.

Sec. 211.32 Filing officers shall notify candidates. . . .

shows that Section 206.21, M. S. A., cannot be justified as a free voting safeguard since all free voting safeguards are provided for in separate and independent sections of such statutes relating to election laws, and hence, Section 206.21, M. S. A., has nothing to do with matters of free and uninfluenced voting and is not open to such construction and has no such purpose. As shown above, the

ostensible object and purpose of Section 206.21, M. S. A., is patently and clearly expressed by its own title and terms to be as follows:

> Title: "Employees May Vote Without Loss of Time."
>
> Terms: (1) "Every employee entitled to vote at an election shall be permitted to absent himself from his work for that purpose during the forenoon of each election day,
>
> (2) "without a penalty or deduction from salary or wages on account of such absence."

Statute Not a Wage Law

As heretofore pointed out, Section 206.21 M. S. A. is in no sense a wage or labor law and cannot be justified as such. It is not designed to establish a wage level nor to establish hours of work, etc. Furthermore, all the elements of inequality of application and discrimination in favor of a select group as applied to voting privileges are manifest in the benefits resulting from non-deduction of wages for time taken out in the forenoon to vote, though no services are rendered to the employer by the privileged group. The statute rewards them by granting them the right to be paid their going rate of wages for the time of such absence. No other than forenoon workers are extended that special privilege.

Apropos of the point that the statute here involved is not a wage law, the comment by Justice Jackson in his dissenting opinion in the case of *Day-Brite Lighting, Inc.* v. *State of Missouri* (March 3, 1951), 342 U. S. 421, 96 L. Ed. 469, 72 S. Ct. 405, is pertinent. Therein he said in relation to a pay-while-voting statute that differed substantially with that here involved:

> "To sustain this statute by resort to the analogy of minimum wage laws seems so far-fetched and un-

convincing as to demonstrate its weakness rather than its strength. Because a State may require payment of a minimum wage for hours that are worked it does not follow that it may compel payment for time that is not worked. To overlook a distinction so fundamental is to confuse the point in issue.

"The Court, by speaking of the statute as though it applies only to industry, sinister and big, further obscures the real principle involved. The statute plainly requires farmers, small service enterprises, professional offices, housewives with domestic help, and all other employers, not only to allow their employees time to vote but to pay them for time to do so. It does not, however, require the employee to use any part of such time for that purpose. Such legislation stands in a class by itself and should not be critically commended as a mere regulation of 'practices in the business-labor field.' "

We have heretofore shown that Kennedy and all other employees of appellant were Union members employed under a Union contract, Article XVIII of which provided:

> "Employees shall be allowed the necessary time off without pay to vote in any Federal, State, or Municipal election."

This provision, if not rendered ineffective by the construction given to Section 206.21, M. S. A. operated to put all employees of appellant on an equal basis.

Effect Upon Employers

While Section 206.21, M. S. A. discriminates as between the workers themselves, our present problem, of course, concerns the effect it may have upon the employers of workers "entitled to vote at an election" as designated therein, and who are within the specified class designated therein and in Section 210.11 M. S. A., which provides:

> "Section 210.11. Refusing Employee Election Privilege. *Every person* who *as principal* or *as an official*

or agent of any other person, shall directly or indirectly refuse, abridge, or in any manner interfere with any of the election privileges or immunities of any employee *of himself or his principal* shall be guilty of a misdemeanor."

The punishment for conviction of a misdemeanor as determined pursuant to Sections 206.21 and 210.11, M. S. A. as provided by Section 610.19, M. S. A. is "by imprisonment in the county jail for not more than three months, or by fine of not more than $100."

Resulting Inequalities and Discriminations Manifested in Two Ways

There are two classifications or viewpoints from which, in common with others in the same situation or condition, the invalidity of Section 206.21, M. S. A., in conjunction with Section 210.11, M. S. A., is to be measured in relation to its direct effect upon the affected employer of "employees entitled to vote at an election," namely:

1. Its effect upon such employer in the position the latter occupies in common with all other members of the general economy of the State of Minnesota as compared with its effect, if any, on such other members thereof; and

2. The effect of the statutes upon such employer of "employees entitled to vote" against whom same are directed in comparison with other members of the same class, consisting of those other employers of "employees entitled to vote at an election" whose working hours fall in periods other than the forenoon of election days.

In Item 1 above, the employer of an "employee entitled to vote at an election," who is so employed in the forenoon of an election day and absents himself from his work dur-

ing such forenoon to vote, by force of the statute, is subjected to the obligation to subsidize the voting of his said employee. This results because such employer is compelled to permit such absence of his employee to vote, "without penalty or deduction of salary or wages on account thereof." But no other member of the general economy is required by said statutes to so subsidize any person to induce them to vote.

In Item 2 above, the employer of an "employee entitled to vote at an election," who is so employed in the forenoon of an election day and absents himself from his work during such forenoon to vote, by force of the statutes is subjected to the obligation to subsidize the voting of his said employee, for the same reason as stated in Item 1. But no other employer member of the class which employs "employees entitled to vote at an election" who, however, have their work hours in the afternoon or night, but not in the forenoon of such election days, are required to subsidize their employee-voters. The statute does not apply to them.

In both examples stated, as above, there is the same discrimination and unequal treatment of members of the same respective classes of persons or concerns in the same relative situation or condition in relation to the employment of "employees entitled to vote at an election."

As has been previously pointed out, said statutes subject the employers against which they are directed to the loss of the services of each employee absenting himself in the forenoon of an election day to vote, and, in addition, such employer must pay his employee full wages for the time of his absence though no services have been rendered during such period. But this compulsory subsidy of such special group of forenoon workers is not required of any employer of employees who (though entitled to vote at an election) are employed during other periods of the

day or night than the forenoon of an election day; nor is such subsidy or any other form of inducement to employed voters to vote required of any other member of the general economy of the State.

Obviously, this results in discrimination and unequal treatment as against individuals, partnerships, corporations, or associations, as employers, and their officials and agents, of "employees entitled to vote at an election" and whose working hours include the forenoon of election days, composing in part the membership in the general economy of the State.

Again in relation to the members of the class of employers (all of whom are in the same situation) who employ "employees entitled to vote at an election" of which some are forenoon workers and others work only in the afternoon or night while the polls are still open, as in the preceding example, there occurs the same involuntary subsidizing of the special group of forenoon workers who absent themselves from their work to vote in the forenoon of election days to the detriment of their employer, but which is not imposed upon those employers of "voters entitled to vote at an election" whose work period is not in the forenoon of such election days but is during such other portion of the election day or night during which the polls remain open. The discrimination and unequal treatment of such members belonging to the same class of employers is at once apparent.

Due Process and Equality Under 14th Amendment

Here follow some United States Supreme Court cases.

The 14th Amendment, in declaring that no State shall deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws, undoubtedly intended

not only that there should be no arbitrary spoliation of property, but that equal protection and security should be given to all *under like circumstances* in the enjoyment of their personal and civil rights; and all persons should be equally entitled to pursue their happiness and acquire and enjoy property.

Barbier v. *Connolly*, 113 U. S. 27, 5 S. Ct. 357, 28 L. Ed. 923.

Equal protection of the laws is something more than an abstract right, and is a command which the State must respect, the benefits of which every person may demand.

Hill v. *Texas*, 316 U. S. 400, 62 S. Ct. 1159, 86 L. Ed. 1559.

The purpose of the clause in the Federal Constitution in respect to equal protection of the laws is to rest the rights of all persons upon the same rule under *similar circumstances.*

Frost v. *Corporation Commission*, 278 U. S. 515, 49 S. Ct. 235, 73 L. Ed. 483.

The inequality prohibited by the Federal Constitution is only such as is actually and palpably unreasonable and arbitrary.

Frost v. *Corporation Commission, supra.*

It is only when the variations in a State's treatment of persons are arbitrary and without reasonable legal basis that an unconstitutional discrimination occurs.

U. S. v. *Burnison*, 339 U. S. 87, 70 S. Ct. 503, 94 L. Ed. 675.

The equal protection clause in the 14th Amendment does not intend to take from the states the right and power to classify the subjects of legislation; it is only

when such attempted classification is *arbitrary* and *unreasonable* that the Court can declare it beyond the legislative authority.

Jeffrey Mfg. Co. v. *Blagg*, 235 U. S. 571, 35 S. Ct. 167, 59 L. Ed. 364.

The classification must be reasonable, not arbitrary and must rest upon some ground of difference having a *fair* and *substantial* relation to the *object* of the legislation, so that *all persons similarly circumstanced* should be treated alike, notwithstanding the latitude of discretion is wide in such regard.

F. S. Royster Guano Co. v. *Virginia*, 253 U. S. 412, 40 S. Ct. 560, 64 L. Ed. 989;

Old Dearborn Distributing Co. v. *Seagram Distillers Corp.*, 299 U. S. 183, 57 S. Ct. 139, 106 A. L. R. 1476, 81 L. Ed. 109.

Discriminations are not to be supported by mere fanciful conjecture, and cannot stand as reasonable if they offend the plain standards of common sense.

Hartford Steam Boiler Inspection & Ins. Co. v. *Harrison*, 301 U. S. 459, 57 S. Ct. 838, 81 L. Ed. 1223.

The discriminations which are open to objections are those where persons engaged in the same business are subject to different restrictions, or are held entitled to different privileges under the same conditions. It is only then that the discrimination can be said to impair that equal right which all can claim in the enforcement of the law.

Soon Hing v. *Crowley*, 113 U. S. 703, 5 S. Ct. 730, 28 L. Ed. 1145.

The 14th Amendment does not prohibit legislation limited as to objects or territory, but merely that all persons

subject to it shall be treated alike, under like circumstances and conditions.

Hayes v. *Missouri*, 120 U. S. 68, 7 S. Ct. 350, 30 L. Ed. 578;

Bowman v. *Lewis (Missouri* v. *Lewis)*, 101 U. S. 22, 25 L. Ed. 989.

The provision of the Constitution (14th Amendment) is satisfied if all persons similarly situated are treated alike in privileges conferred or liabilities imposed.

Field v. *Barber Asphalt Paving Co.*, 194 U. S. 618, 24 S. Ct. 784, 48 L. Ed. 1142;

Ball's Gap. R. Co. v. *Pennsylvania*, 134 U. S. 232, 10 S. Ct. 533, 33 L. Ed. 892;

Re Police Power; Class Legislation, etc.

A reference to decisions of the Supreme Court of the State of Minnesota, prior in point of time to its decision in the case at bar, disclose generally consistent adherence to the principles laid down by the United States Supreme Court under the Fourteenth Amendment.

As declared by the Supreme Court of Minnesota, the police power is the power of the State to impose these restraints upon private rights which are necessary for the general welfare.

Dunnell's Minn. Dig., 3rd Ed., Vol. 3, "Constitutional Law", Section 1063, and cases cited.

The object of its exercise is the preservation of the public welfare, as distinguished from the protection or advancement of a mere private interest, and the remedy adopted thereunder must be reasonably designed to accomplish its purpose without going beyond the reasonable demands of the occasion.

Dunnell's Minn. Dig., 3rd Ed. *supra*, Section 1063, and cases cited.

While the police power is extensive, it is not without limits. To be sustained under the police power a law must be a police regulation in fact; it must not arbitrarily or unreasonably interfere with personal or property rights; it must have for its object the public welfare and not merely private interests; and it must have some real and substantial relation to its ostensible object and have some tendency to accomplish it.

Dunnell's Minn. Dig., supra, Section 1604, and cases cited.

The question whether a particular act or thing required by the public authorities in this respect is arbitrary and unreasonable is a judicial question and may be raised by the person proceeded against in any appropriate legal way, by affirmative action, in the way of defense.

Dunnell's Minn. Dig., 3rd Ed., *supra,* Section 1604, and cases cited, including:

State v. *Ernst,* 209 Minn. 586, 297 N. W. 24, wherein the Supreme Court said:

"Notwithstanding the extension of the concept of the State's police power within recent years, the exercise of that power is still limited by the due process and equal protection clauses of the 14th Amendment to the Constitution . . . and there can be no arbitrary discrimination in the exercise of the power. *Asher* v. *Ingels* (D. C.), 13 Fed. Supplement 654, 658; *Panhandle Eastern Pipe Line Co.* v. *State Highway Comm.,* 294 U. S. 613, 55 S. Ct. 563, 79 L. Ed. 1090."

Class legislation, discriminating against some and favoring others, is prohibited, but legislation is not prohibited, either by the State or Federal Constitution, which, in carrying out a public purpose, is limited in its application, if, within the sphere of its operation, it affects alike

all persons similarly situated and the classification is not arbitrary.

Dunnell's Minn. Dig., 3rd Ed., Vol. 3, *supra*, Section 1619, and cases cited, including;

Allen v. *Pioneer Press Co.* (1889), 40 Minn. 117, 41 N. W. 936, 3 L. R. A. 532, 12 Am. St. Rep. 707.

Unequal and partial legislation is used synonymously with class legislation.

Dunnell's Minn. Dig., 3rd Ed., Vol. 3, *supra*, Section 1668 and cases cited, including:

State v. *Cooley* (1894), 56 Minn. 540, 550, 58 N. W. 150;

State v. *Wagener* (1899), 77 Minn. 483, 497, 80 N. W. 633, 778;

State v. *Luscher* (1923), 157 Minn. 192, 194, 195 N. W. 914.

Re Public Character—

Allen v. *Pioneer Press Co.* (1889), 40 Minn. 117, 41 N. W. 936, 3 L. R. A. 532, 12 Am. St. Rep. 707, wherein the Court said at page 120:

"So long as a law applies equally to all engaged in that kind of business, treating them all alike, subjecting them to the same restrictions, and giving them the same privileges under similar conditions, then it is *public in character*, and not subject to the objection of being partial or unequal legislation, provided, of course, as already stated, the distinction made by it is based on some reason of policy, and is not purely arbitrary. *Cooley Const. Lim.*. 481, *et seq.*"

Johnson v. *St. Paul & D. Ry. Co.* (1890), 43 Minn. 222, 45 N. W. 156 (must have an apparent, natural reason);

Cameron v. *Chicago, M. & St. P. Ry. Co.* (1896), 63 Minn. 384, 65 N. W. 652 (must be based on some

reason of public policy, and apply to and embrace all persons alike under similar circumstances);

State v. *Chi. M. & St. P. Ry. Co.* (1897), 68 Minn. 381, 71 N. W. 400, wherein the Court says:

"But, while the police power of the State is a very extensive one, it is not without limits. A law enacted in the exercise of the police power must be a police regulation in fact. If it will not conduce to any legitimate police purpose, or if it amounts to an arbitrary and unwarranted interference with the right of the citizen to pursue any lawful business, the courts have a right, and it is their duty to declare the law unconstitutional."

Arbitrary and Unreasonable—Denial of Equal Protection—

State ex rel. Greenberg v. *Erickson* (1924), 159 Minn. 287, 289, 198 N. W. 1000, which, among other things, involved Section 28, C. 426, Laws of 1923, that excepted persons under 21 years of age from taking out hunting licenses required of all other persons. The court held such provision to be unconstitutional because based upon an arbitrary and unreasonable classification, and said:

"The object of the exception is not the protection of minors or the protection of others against minors. Its purpose is to grant a favor or privilege to the considerable number of minors, simply because they are minors, who compete in hunting and trapping with adults. The basis of the classification is arbitrary and is without substantial relation to the general purpose of the Act. It is unconstitutional as class legislation."

State v. *Hubbard* (1938), 203 Minn. 111, 280 N. W. 9.—Class legislation, discriminating against some and favoring others, is prohibited, but legislation is not prohibited either by the state or federal constitution which, in carrying out a public purpose, is limited in its application, if, within the sphere of its operation,

it affects alike all persons similarly situated and the classification is not arbitrary. . . . (involved tax law)

State ex rel. Larson v. *City of Minneapolis* (1933), 190 Minn. 138, 251 N. W. 121, involving an ordinance requiring that all pasteurized milk sold within the City of Minneapolis must be pasteurized within the City limits. The ordinance was held to be unconstitutional as unreasonable and arbitrary and not tending to accomplish the purpose of its adoption.

State v. *Pocock* (1925), 161 Minn. 376, 201 N. W. 610, wherein the Court says in holding invalid a statute requiring employees in certain specified industries (but not in others) one day of rest in each week:

"The statute in question is a sanitary measure enacted to promote the health and general welfare of employees by affording them one day of rest in each week. To be valid it must operate alike upon all who are similarly situated. If it selects particular employees of the class and gives to them privileges which it withholds from other employees of the same class; or if it selects particular employers of the class and imposes upon them burdens and restrictions from which it exempts other employers of the same class, it denies the equal protection of the laws to those discriminated against and thereby violates the constitutional mandate.

"The Legislature undoubtedly may except from the operation of such a law employments and activities the suspension of which would be detrimental to the public, and also those where continuous operation is essential, or where other differences of situation, condition or resulting consequences furnish a reasonable ground for excepting them from such a restriction. But, if it brings the employees of one establishment within the law and leaves those of another outside the law with no reasonable ground for not treating them alike, it violates the equality rule.

"An examination of this statute shows that anyone who employs men in a power plant or boiler or engine

room is within the law if the heat or power generated is used in a hotel, a shoe factory, a bakery or a restaurant, but is outside the law if it is used in a newspaper plant, a place of public amusement, a cannery, a flour mill, an automobile garage or repair shop, or a creamery or cheese factory located in a city of the third or fourth class. The need for a day of rest is the same whether the employee is generating heat and power for use in one or another of the lines of business mentioned, and the excluded employees are as clearly within the class which the law sought to benefit as are those brought within it. The statute cannot be sustained as creating a valid classification, unless there are conditions or exigencies peculiar to the excluded lines of business which furnish a reasonable ground for withholding the benefit of the act from employees engaged in such lines of business, while granting it to employees performing like services in all other lines of business. No differences in conditions have been pointed out, and none occur to us, that suggest a legitimate reason for saying that employees in hotels, bakeries, restaurants, factories, packing plants and machine repair shops shall have a day of rest, and that employees in places of amusement, newspaper plants, canneries, flour mills and automobile repair shops shall not. We know of no reason for exempting places of public amusement from the operation of the law that does not apply with at least equal force to hotels which furnish accommodations for the traveling public at all times. We think the statute clearly violates both the State and the Federal Constitutions, and answer both questions in the affirmative."

State ex rel. McCue v. *Sheriff of Ramsey County* (1892), 48 Minn. 236, 51 N. W. 112.

Equal Protection—Uniformity—

State v. *Pocock, supra;*

State v. *Comer* (1940), 207 Minn. 93, 290 N. W. 434, wherein defendant was convicted of selling soft drinks in a gasoline filling station without a license required

by Minn. Stat. 1938, Supp., Section 5903 and 5905, from which "general merchandise stores" were excepted. In holding the statute unconstitutional the Supreme Court said that: "There was no reasonable basis for requiring a license from one and not the other, and that to do so would result in violation of constitutional rights;" that "an exemption differentiating in treatment without substance to fortify it is violative of the equal protection of the laws;" and that "All those within the general class of that activity must be treated the same unless reasonable and substantial grounds for differentiation exist."

State v. *Luscher* (1923), 157 Minn. 192, 195 N. W. 914 (equality provision of Constitution held violated by excluding from provision of licensing act all persons lawfully practicing dentistry at the time of its enactment.)

In re Humphrey (1929), 178 Minn. 331, 227 N. W. 179 (equality provision of Constitution violated by law prescribing conditions upon which certain persons shall be admitted to practice law—honorably discharged military or naval veterans).

In re Grantham (1929), 178 Minn. 335, 227 N. W. 180—Decision as in *In re Humphrey, supra,* but denying court reporter right to practice law.

George Benz Son, Inc. v. *Ericson* (1948), 227 Minn. 1, 34 N. W. (2d) 725, wherein Laws 1947 C. 528, amending Minn. Stat. 340.11, Subd. 12 (Mason's Minn. St. 3200-25), relating to liquor license fees which applied only to persons or corporations licensed to manufacture or sell wines at wholesale, but had no application to the liquor business at the retail level, was held to be invalid class legislation.

State v. *Pehrson* (1939), 205 Minn. 573, 287 N. W. 313, 123 A. L. R. 1045 Legislative enactments which discriminate against some and favor others are prohibited by the State and Federal Constitutions, unless these enactments affect alike all persons similarly situated, and the classification is not arbitrary. (transient merchants)

State ex rel. Mudeking v. *Parr* (1909), 109 Minn. 147, 123 N. W. 408. (Unconstitutional occupation tax on hawkers, etc., as class legislation and as tax law lacks equality, etc.)

Principles of Natural Justice—

Allen v. *Pioneer Press Co.* (1889), 40 Minn. 117, 41 N. W. 936, wherein it is said:

> "And in determining whether in a given case a statute violates any of these fundamental principles incorporated in the Bill of Rights, it ought to be tested by principles of natural justice, rather than by comparison of rules of law, statute or common, presently in force."

Breimhorst v. *Beckman* (1949), 227 Minn. 409, 435, 35 N. W. (2d) 719, citing above.

The decision of the Supreme Court of Minnesota in the case at bar fails to apply the facts to the principles of the foregoing cases.

It fails to recognize that Section 206.21 in conjunction with Section 210.11 and 610.19, M. S. A., nullify the ostensible purpose thereof of inducing employees entitled to vote, whose hours of work preclude their doing so without loss of time from work, by limiting the privileges extended to induce such voting to forenoon workers only, notwithstanding the fact that, while the polls are open for 13 hours (between 7:00 a. m. and 8:00 p. m. of each election day, or in some places between 8:00 a. m. and 9:00 p. m. of such day) and many employees entitled to vote have work periods that include other portions of election days than the forenoon, nevertheless the privileges granted the forenoon workers are not extended to them.

This, it is submitted, is arbitrary, discriminatory, unreasonable, and fails in its purported public purpose—thus becoming a mere grant of a special privilege to each fore-

noon employee only—"to absent himself from his work in the forenoon, without penalty or deduction of salary or wages because of such absence". Certainly all the other employed voters whose work period does not fall in the forenoon of election day, but nevertheless does fall in the remaining portion of the period when the polls are open, are not given the equal treatment to which entitled, but are discriminated against arbitrarily. Their votes are just as important as the votes of the forenoon employees.

It is obvious that this unconstitutional feature of the statutes as applied to employees entitled to vote, directly and adversely affects the employers of such employees who are by operation of the statute compelled to subsidize the voting of the privileged group of forenoon employees, without just compensation. Hence, the objections that said statutes operate against appellant as an employer of employees entitled to vote, as well as against all other members of the same class of employers to which appellant belongs, vest appellant with the right to object to the constitutionality of said statutes as construed by the Minnesota Supreme Court in the case at bar as being repugnant to and in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Other than the *Day-Brite Lighting, Inc.* v. *Missouri*, case, *supra*, the only cases involving so-called Pay While Voting Statutes decided by appellate courts of last resort prior to the decision in the case at bar were the following:

> *People* v. *Chicago, M. & St. P. R. Co.* (February 21, 1922), 306 Ill. 486, 138 N. E. 155, 28 A. L. R. 610;
> *Illinois Central Railroad Company* v. *Commonwealth of Kentucky* (June 3, 1949), 305 Ky. 632, 204 S. W. 2d 973.

In *People* v. *Chicago, M. & St. P. R. Co., supra*, the Supreme Court of Illinois considered a statute of Illinois

requiring employers to allow employees time (two hours) to vote without deduction of pay, and it held that the statute deprived employers of their property without due process of law. The Court, in effect, held further that the statute deprived employers of this right to contract, and that the police power of the State did not extend to requiring employers to pay employees their regular wages during the time they are absent from employment to vote on election day. The Court said further that the police power should not override the demands of natural justice.

In 1947 the Supreme Court of Kentucky, in the case of *Illinois Central Railroad Company* v. *Commonwealth, supra,* passed upon a statute requiring an employer to pay employees for time which they are allowed to take off from work on election day for the purpose of voting (four hours of absence being allowed by the statute). That Court held that the statute was unconstitutional under both the Constitution of Kentucky and the Constitution of the United States, as a deprivation of property without due process of law, since (1) it arbitrarily required employers to pay for work which is not performed; (2) it discriminatorily required employers to subsidize the voting privileges of employees; and (3) it was not a reasonable exercise of police powers.

Cases Distinguished

The following cases in which constitutionality of, so-called, Pay While Voting Statutes was upheld, viz.:

People of the State of New York v. *Ford Motor Co.* (June 26, 1946), 63 N. Y. S. 2d 697 (an intermediate, not an appellate court);

Ballarini, on behalf of Lodge 1327, *International Association of Machinists, Production and Aeronautical Workers* v. *Schlage Lock Company* (Nov. 17, 1950),

(Appellate Dept., Superior Ct., City & County of San Francisco, Cal.), 226 Pac. 2d 771;

Day-Brite Lighting, Inc. v. *State of Missouri* (March 3, 1951), 342 U. S. 421, 96 L. Ed. 469, 72 S. Ct. 405,

all had the essential factual difference from the case at bar that time off for a specific number of hours during voting period was allowed to all employees while polls were open, while in the case at bar the time of absence to vote is limited to the forenoon of election day though polls are open for 13 hours, thus discriminating against workers entitled to vote whose working hours consisted of periods of the day other than the forenoon and hence were not granted the privilege of absenting themselves to vote without pay deduction. This material difference brings into play a series of inequalities of application of the Minnesota statute, both as to employers and employees, as pointed out in earlier portions of this statement, that were not involved in any of the three cases next above cited.

It is noteworthy that in both of the last two cited cases there were strong dissenting opinions.

Another point of difference between the case at bar and the three next above cited cases is that the Minnesota statute is not a statute to protect free and uninfluenced voting but is designed to induce employed forenoon workers (as a specially privileged group) to vote. There are in Minnesota (as heretofore shown) adequate and separate provisions of Minnesota election laws to safeguard free and uninfluenced voting. Furthermore, the Minnesota statute is, as heretofore shown, not a wage law. These differences render inapplicable to the case at bar much of the theory adopted by the courts in the cases referred to as a basis for upholding the constitutionality of the particular Pay While Voting Statutes referred to.

Conclusion

The undisputed facts in the case at bar show Sections 206.21 and 210.11, M. S. A., as construed and applied by the Supreme Court of the State of Minnesota to be repugnant to and in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States in the following respects:

(1) Freedom of contract is abridged in that (though in seeming conflict with the prohibition against imprisonment for debt as declared by Section 12 of Article 1 of the Bill of Rights of the Constitution of Minnesota) the Minnesota Supreme Court (disregarding the principle that statutes are to be read into contracts to which they apply) held the required payment of wages for time of absence of an employee was not a "debt" but a statutory obligation, which if not met was punishable by fine or imprisonment, and held further that employees could not waive the personal privilege accorded them to absent themselves from their work in the forenoon of any election day to vote, without penalty or deduction of salary or wages because of such absence.

(2) That property of employers of forenoon workers entitled to vote, who absent themselves from their work in the forenoon of an election day to vote, is taken without just compensation and without due process of law, in that such employer is compelled by operation of the statute, as construed by the Minnesota Supreme Court, to subsidize the voting of the special privileged group of forenoon employees entitled to vote who absent themselves to vote during the forenoon of an election day. The compulsory subsidy results because the employer of the forenoon worker is required to pay him for time of absence to vote, for which no services are performed, and to incur such additional loss of the employees' services and any

resulting loss and damage, and no compensation is granted such employer. While this burden is not imposed upon any other employer of workers entitled to vote nor are any other persons required to subsidize voters.

(3) Section 206.21 in conjunction with Sections 210.11 and 610.19, M. S. A., constitutes class legislation that is so discriminatory, unreasonable and unequal in their application to persons of the same class therein designated (viz., employers of employees entitled to vote at any election who exercise the special privilege granted by absenting themselves in the forenoon of any election day to vote, without penalty or deduction of salary or wages because of such absence) as to constitute an unlawful exercise of the police power of the State of Minnesota.

The discrimination manifests itself in the grant of the statutory privilege to forenoon workers only as against all other workers entitled to vote whose work period (though covering a portion of the period when the polls are open) does not come in the forenoon. This results in discrimination between the other employees of the respective groups of employees entitled to vote, as well as against employers of forenoon workers entitled to vote and all other persons composing the general economy of the State, none of whom are required to subsidize voting.

The unreasonableness of the statutes is manifest in the foregoing inequalities and, while the ostensible purpose of the statutes is to induce voting generally of employed workers, actually it fails of its ostensible purpose because it grants the inducement offered, viz., the privilege of absenting himself from his work to vote, without penalty or deduction of salary or wages because of such absence, only to forenoon workers, notwithstanding that there are other workers equally entitled to vote who are employed on election days while the polls are open, but not in the forenoon. No good reason appears why the one group should

receive the special privilege but not the other. The vote of employees in either group is of equal value in the eyes of the law.

The inequality in the operation of such statutes is patent in the foregoing remarks on discrimination and unreasonableness manifest in said statutes.

The valid exercise of the police power does not extend to grants of special privilege to or impositions against some members of the same class and not to the other members thereof.

We respectfully submit that the Supreme Court of the United States has jurisdiction of the appeal.

Dated May 27th, 1954.

FOWLER, YOUNGQUIST, FURBER, TANEY
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APPENDIX I

RAMSEY COUNTY

No. 178

36143

STATE OF MINNESOTA, Respondent,

vs.

INTERNATIONAL HARVESTER Co., Appellant

NELSON, *J.*, Took no part, KNUTSON, *J.*

Endorsed Filed March 5, 1954, Grace Kaercher Davis, Clerk, Minnesota Supreme Court.

SYLLABUS

1. The doctrine of waiver is not applicable in a criminal prosecution for the violation of a statute expressing the public policy of the State which was in existence prior to the alleged waiver.

2. The Minnesota pay-while-voting statutes, M. S. A. 206.21 and 210.11, are not so discriminatory, unreasonable, or unequal in their application to employers of the class to which appellant belongs, or to employees placed in a certain category by reason of daily working shifts and thereby excluded from the benefits of their provisions, as to constitute an unlawful exercise of the police power or a violation of the due process and equal protection provisions of the State and Federal Constitutions.

3. The Minnesota pay-while-voting statutes are not in conflict with the National Labor Relations Act since the purpose of the latter act is not to control the rights of the several states against either management or labor but to protect the legitimate rights of employers and employees in their relations affecting commerce.

4. Enforcement of §§ 206.21 and 210.11, in conjunction with § 610.19, does not result in an indirect imposition of

imprisonment for debt in violation of Minn. Const. art. 1, § 12, since these statutes raise a statutory obligation to pay rather than a "debt" and prosecution for violation of such statutes only constitutes the legal sanction imposed by the State under its police powers for breach of a statutory duty.

Affirmed.

OPINION

NELSON, *Justice.*

This case arose upon a verified complaint filed in the municipal court of the city of St. Paul, signed by Francis Davidson, president of Local Union No. 763, International Union, United Automobile, Aircraft, and Agricultural Implement Workers of America. The complaint charged that the defendant International Harvester Company unlawfully deducted wages of one of its employees for absenting himself from work during the forenoon of election day, November 4, 1952, contrary to and in violation of M. S. A. 206.21 and 210.11. On that day the polls in the city of St. Paul were open from 7 a. m. to 8 p. m. The defendant company employed its workers in two daily shifts; the first between 8 a. m. and 4:30 p. m., and the second shift between 4:30 p. m. and 12:30 a. m. Each of its employees was hired pursuant to a union contract dated January 2, 1951, which contained the following provision:

"Article XVIII

"Voting

"Employees shall be allowed the necessary time off without pay to vote in any Federal, State or Municipal election."

Thomas D. Kennedy, the employee here involved, was a regular employee of a parts depot operated by the defendant company at 767 Eustis Street in the city of St. Paul. Kennedy resided at 496 Dayton Avenue in said city, and the polling place for his voting district was at 405 Selby avenue. On election day Kennedy absented himself from work for two hours in the forenoon, while on

his regular shift, for the purpose of voting, and he performed no services for his employer during this period. The defendant company deducted from his wages the sum of $3.50 for that day, such deduction representing two hours of absence from work at $1.75 per hour.

Prior to the election date, Mr. Davidson, who at the time was employed by defendant company and was president of Local 763 of the union which had entered into the employer-employee contract with defendant company, met with Walter Swales, industrial relations advisor at the parts depot. At that meeting Mr. Swales was asked whether the employees would be given time off to vote as provided by state law, and he informed Mr. Davidson that word had been received from the home office that the employees would not be allowed time off to vote with pay. Davidson admitted at the trial that with this background he had made the present complaint. A letter from the Chicago office of the defendant company, dated October 29, 1952, signed by Ivan L. Willis, vice president, revealed that the company's policy as to absence for voting purposes was to allow any employee the necessary time off, but nonsalaried employees were not to be paid for any lost time and salaried employees would receive their full salaries, free from deductions, only if advance notice was given to the supervisor of his intention to vote during working hours and if he could not vote without loss of regular working hours.

The matter was submitted to the trial court pursuant to written stipulation of facts and oral testimony taken during the trial. No controversy exists here as to the facts, the State being in agreement that all the facts as stated by the appellant in its brief are correct. The defendant company was adjudged guilty as charged in the complaint and ordered to pay a fine of $100 and it appeals from the judgment.

The following statutes of the State of Minnesota are involved:

> "206.21 Employees May Vote Without Loss of Time. Every employee entitled to vote at an election shall be permitted to absent himself from his work

for that purpose during the forenoon of each election day, without a penalty or deduction from salary or wages on account of such absence."

"210.11 REFUSING EMPLOYEE ELECTION PRIVILEGE. Every person who as principal or as an official or agent of any other person, shall directly or indirectly refuse, abridge, or in any manner interfere with any of the election privileges or immunities of any employee of himself or his principal, shall be guilty of a misdemeanor."

"610.19 PUNISHMENT OF MISDEMEANORS WHEN NOT FIXED BY STATUTE. Whoever is convicted of a misdemeanor for which no punishment is prescribed by any statute in force at the time of conviction and sentence shall be punished by imprisonment in the county jail for not more than three months, or by a fine of not more than $100."

The main issues presented are as follows:

Whether defendant company is in a position to attack the constitutionality of § 206.21, in conjunction with §§ 210.11 and 610.19, and, if so, whether §§ 206.21 and 210.11, applied in conjunction with § 610.19, are repugnant to the constitutional prohibition against imprisonment for debt, Minn. Const. art. 1, § 12.

Whether the statutes in question are so discriminatory, unreasonable, and unequal in their application to employers of the same class to which defendant belongs as to constitute an unlawful exercise of the police power and a violation of the due process, equal protection, and impairment of contract obligations of Minn. Const. art. 1, §§ 2, 7, 8, 11, and 13, and U. S. Const. art. I, § 10, and U. S. Const. Amend. XIV, § 1.

Whether the provisions in the employment contract to the effect that employees were entitled to time off to vote, but without pay, constitute a valid waiver of the prohibition against a penalty or deduction from salary or wages found in § 206.21.

1. The latest decisions, including *Day-Brite Lighting, Inc.* v. *Missouri*, 342 U. S. 421, 72 S. Ct. 405, 96 L. Ed. 469,

decided by the Supreme Court of the United States March 3, 1952, in considering the validity of statutes granting time off to vote either with or without pay, have stated that the choice of the means of attaining the desired objective is to be left to legislative power and discretion. *State* v. *Day-Brite Lighting, Inc.*, 362 Mo. 299, 240 S. W. (2d) 886; *People* v. *Ford Motor Co.*, 271 App. Div. 141, 63 N. Y. S. (2d) 697; *Ballarini* v. *Schlage Lock Co.*, 100 Cal. App. (2d) Supp. 859, 226 P. (2d) 771.[1]

The present statutes which we are considering had their beginning in L. 1891, c. 4, § 127, and in L. 1893, c. 4, § 109, each enactment entitled "An act to regulate elections." L. 1893 contained a more detailed treatment of the subject and referred to "Any person or corporation, or officer or member thereof, who shall refuse to an employe the privilege hereby conferred, • • •."

The coded §§ 206.21 and 210.11 are the same as L. 1939, c. 345, part 6, c. 8, § 21, and part 9, c. 1, § 11, respectively. L. 1939, c. 345, substituted the words "every person" for "any person or corporation." There has been no change in these sections since L. 1939, c. 345, entitled "An Act to regulate elections." The general provisions of this act are now coded as M. S. A. chapters 200 to 212, inclusive, and § 206.21 is to be found in the chapter on "conduct of elections and manner of voting," and § 210.11 in the chapter on "penal provisions" under the general head of "elections." The general designation "every person" includes corporations in the present statutory provisions involved here. See, § 645.44, subd. 7; 5 Dunnell, Dig. & Supp. Person, p. 251; *State* v. *Minneapolis Milk Co.*, 124 Minn. 34, 144 N. W. 417.

The defendant company contends that, since the contract of employment entered into in the year 1951 between it and its employees provided time off to vote *without pay*, there was in effect a waiver of the pay-while-voting statutes of Minnesota and that therefore the penal section has not been offended. These statutes had in effect been on

[1] For a review of legislation and cases in this field, see 47 Col. L. Rev. 135; Illinois Cent. R. Co. v. Commonwealth, 305 Ky. 632, 204 S. W. (2d) 973; People v. C. M. & St. P. Ry. Co., 306 Ill. 486, 138 N. E. 155; but cf. Zelney v. Murphy, 387 Ill. 492, 56 N. E. (2d) 754.

the statute books of this State for approximately 60 years, and it must be presumed that this contract was made in contemplation thereof. It is well established that freedom of contract is a qualified right and not an absolute right, and this qualification on liberty of freedom to contract has long been recognized. The obligations of this contract cannot properly be said to be impaired by statutes in force when the contract was made. There appears to be ample precedent for the proposition that in the public interest the legislature can interfere with freedom of contract in regard to agreements between employers and employees without violating due process requirements and that regulations such as we are considering in the instant case neither interfere with freedom of contract nor violate due process under either the Federal or State Constitutions. The concept of freedom of contract, which has been dealt with by the courts as an aspect of due process, is to be distinguished from the contract clause, U. S. Const. art. I, § 10, which prohibits the impairment of the obligation of contract. See, 47 Col. L. Rev. 138.

2. Whether these regulations come within the police power in the legislative field is a debatable issue, and therefore the wisdom of the regulations is not for the courts unless they are found to be so discriminatory, unreasonable, and oppressive that it must be determined by the courts as a question of law. Reluctance of courts of recent date to substitute their judgment in the economic realm points the way to the constitutionality of pay-while-voting statutes.[2] We see no constitutional violation in these respects, and so hold.[3] Neither do we find these stat-

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[2]Helvering v. Davis, 301 U. S. 619, 57 S. Ct. 904, 81 L. ed. 1307, 109 A. L. R. 1319; West Coast Hotel Co. v. Parrish, 300 U. S. 379, 57 S. Ct. 578, 81 L. ed. 703; Day-Brite Lighting, Inc. v. Missouri, *supra*.

[3] Nebbia v. New York, 291 U. S. 502, 54 S. Ct. 505, 78 L. ed. 940, 89 A. L. R. 1469; Olsen v. Nebraska, 313 U. S. 236, 61 S. Ct. 862, 85 L. ed. 1305, 133 A. L. R. 1500; Lincoln Union v. Northwestern Co., 335 U. S. 525, 69 S. Ct. 251, 93 L. ed. 212, 6 A. L. R. (2d) 473; California Auto Assn. v. Maloney, 341 U. S. 105, 71 S. Ct. 601, 95 L. ed. 788; Noble State Bank v. Haskell, 219 U. S. 104, 31 S. Ct. 186, 55 L. ed. 112, 32 L. R. A. (N. S.) 1062; City of St. Paul v. Fielding & Shepley, Inc., 155 Minn. 471, 194 N. W. 18; Home Bldg. & Loan Assn. v. Blaisdell, 290 U. S. 398, 54 S. Ct. 231, 78 L. ed. 413, 88 A. L. R. 1481.

utes to be so, unreasonable and unequal in their application to employers of the class to which defendant, International Harvester Company, belongs as to constitute unlawful exercise of the police power and a violation of the due process and equality provisions of the State and Federal Constitutions.

The decisions of this Court have adopted and followed the rule that unless a law is unconstitutional beyond a reasonable doubt it must be sustained. The power of the courts in this regard is to be exercised only when absolutely necessary and then with extreme caution. A law is not to be declared unconstitutional by the courts unless palpably so; and where a statute has been acquiesced in and acted upon in important matters for many years, a court will not declare it unconstitutional if it can be sustained by any reasonable construction. See, 6 Dunnell, Dig. & Supp. § 8931, and cases cited. Neither is it for the courts to determine the wisdom or expediency of legislative enactments within the realm of police legislation. The judicial function is to determine whether the ostensible protective purpose of the purported police regulation relates to the public welfare and not merely to a private interest and whether the remedy is designed to accomplish that purpose without going beyond the reasonable demands of the occasion so as to arbitrarily and unnecessarily interfere with personal and property rights. 3 Dunnell, Dig. (3 Ed.) § 1605; *West Coast Hotel Co.* v. *Parrish, supra.*

The contention that a discrimination between an employer of labor and persons who do not employ labor constitutes a denial of equal protection lacks force, as the courts have frequently upheld statutes which apply only to specified categories of employees.[4] The defendant com-

[4] Carmichael v. Southern Coal & Coke Co., 301 U. S. 495, 57 S. Ct. 868, 81 L. ed. 1245; Booth v. Indiana, 237 U. S. 391, 35 S. Ct. 617, 59 L. ed. 1011; Jeffrey Mfg. Co. v. Blagg, 235 U. S. 571, 35 S. Ct. 167, 59 L. ed. 364; McLean v. Arkansas, 211 U. S. 539, 29 S. Ct. 206, 53 L. ed. 315; St. Louis Consol. Coal Co. v. Illinois, 185 U. S. 203, 22 S. Ct. 616, 46 L. ed. 872; W. H. H. Chamberlin, Inc. v. Andrews, 271 N. Y. 1, 2 N. E. (2d) 22, affirmed without opinion, 299 U. S. 515, 57 S. Ct. 122, 81 L. ed. 380, rehearing denied, 301 U. S. 714, 57 S. Ct. 926, 81 L. ed. 1365.

pany likewise contends that making the pay-while-you-vote statutes apply only to forenoon workers on election day is discriminatory and unreasonable and offends the due process and equality provisions of the Federal and State Constitutions. It argues that, if such statutes are to be upheld as a valid exercise of the police power, their real purpose should be to induce *all* employed workers entitled to do so—not merely forenoon workers. Of course, the legislative judgment was exercised here when these statutes were adopted, and the members of the legislature no doubt took the view that those who did not work forenoons would have ample opportunity to vote then; that those on daytime shifts would be sufficiently aided in freely exercising the voting franchise by limiting time off for voting without penalty or pay deduction to the forenoon of election day; and that no greater burden need be placed upon the employer than this to protect the right of suffrage and guard and promote the general welfare.

Class legislation, discriminating against some and favoring others, is prohibited; but legislation which, in carrying out a public purpose, is limited in its application is not prohibited by either the State or Federal Constitutions if, within the sphere of its operation, it affects alike all persons similarly situated and the classification is not arbitrary. The grounds for discrimination between persons similarly situated may be slight. The fact that a statute discriminates in favor of a certain class does not make it arbitrary if the discrimination is founded on a reasonable distinction or if any reasonable state of facts can be conceived to sustain it. The question is primarily for the legislature, and unless a discrimination is manifestly arbitrary and unreasonable, it will be sustained. The legislature may strike at an evil where it is most felt or where it is most practical to deal with it. The courts are not at liberty to speculate upon the considerations which motivate the legislature or to declare void legislative classification where there is some reason therefor, even though the courts may not hold such reasons in the same high

regard as did the legislature.[5] The only practical limitation on the power of the legislature to make any classification is that the classification shall be based upon some reason suggested by necessity or by some difference in the situation and circumstances of the subjects classified suggesting the necessity of different legislation with respect to them. *State ex rel. Douglas* v. *Westfall*, 85 Minn. 437, 89 N. W. 175, 57 L. R. A. 297; *Hassler* v. *Engberg*, 233 Minn. 487, 48 N. W. (2d) 343; *Burns* v. *City of St. Paul*, 210 Minn. 217, 297 N. W. 638; *Kellerman* v. *City of St. Paul*, 211 Minn. 351, 1 N. W. (2d) 378.

Mr. Justice Douglas speaking for the United States Supreme Court in *Day-Brite Lighting, Inc.* v. *Missouri, supra*, referring to a Missouri pay-while-you-vote statute similar to ours, said that the State of Missouri by this legislation had sought to safeguard the right of suffrage by taking from employers the incentive and power to use their leverage over employees to influence the vote; that the police power is not confined to any narrow category for it extends to all the great public needs; that the protection of the right of suffrage under our scheme of things is basic and fundamental; and that the only semblance of substance in the constitutional objection to the Missouri law was that the employer must pay wages for a period in which the employee performs no service. The Court disposed of the latter objection by saying that, while many forms of regulation reduce the net return of the enterprise, yet that fact does not give rise to a constitutional infirmity, for most regulations of business necessarily impose financial burdens on the enterprise for which no compensation is made and that such burdens are part of the cost of our

[5] 3 Dunnell, Dig (3 ed.) § 1669; Mathison v. Minneapolis St. Ry. Co., 126 Minn. 286, 148 N. W. 71, L. R. A. 1916D, 412; Loew v. Hagerle Brothers, 226 Minn. 485, 33 N. W. (2d) 598; State v. Pehrson, 205 Minn. 573, 287 N. W. 313, 123 A.L.R. 1045; Eldred v. Div. of Employment and Security, 209 Minn. 58, 295 N. W. 412; Carmichael v. Southern Coal & Coke Co., 301 U. S. 495, 57 S. Ct. 868, 81 L. ed. 1245, 109 A. L. R. 1327; General Mills, Inc. v. Div. of Employment and Security, 224 Minn. 306, 28 N. W. (2d) 847; State ex rel. Equity Farms, Inc. v. Hubbard, 203 Minn. 111, 280 N. W. 9; Thomas v. Housing & Redevelopment Authority, 234 Minn. 221, 48 N. W. (2d) 175.

civilization. It was held that the Missouri law under consideration had no such infirmity for it was designed to eliminate any penalty for exercising the right of suffrage and to remove a practical obstruction to getting out the vote. The Court then stated that the public welfare is a broad and inclusive concept, that the moral, social, economic, and physical well-being of the community is one part of it and the political well-being another, and that the police power which is adequate to fix the financial burden for one is adequate for the other. In effect it was held that the need for the classification provided for by the Missouri statute was a matter for legislative judgment and the classification did not amount to a denial of equal protection of the laws, citing *American Federation of Labor* v. *American Sash & Door Co.*, 335 U. S. 538, 69 S. Ct. 258, 93 L. Ed. 222, 6 A. L. R. (2d) 481.

3. The defendant company also contends that these pay-while-you-vote statutes conflict with provisions of the National Labor Relations Act as amended by the Taft-Hartley Labor Act (61 Stat. 142, 29 USCA, § 158[b][6]). It must be clear that the purpose of the Taft-Hartley act is not to control the rights of the several states against either management or labor as to any matters that concern us here. Its purpose is set forth in 61 Stat. 136, 29 USCA, § 141(b), which reads as follows:

> "It is the purpose and policy of this chapter, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, • • •."

We are unable to see where any of the provisions of this act in any way affect the election laws of the State of Minnesota nor the exercise of the police power of the State in connection therewith regulating the same, and we so hold.

We see no conflict between the provisions of the election laws of the State under consideration here and the other provisions of our general election laws contained in chapters 200 to 212, inclusive, nor any conflict between §§ 206.21, 210.11, and 610.19 providing the penalty for misdemeanors

where a penalty is not otherwise provided in the act itself. These may properly be construed and applied together in the instant case without violating any of the provisions of the Constitution of the State of Minnesota or the Constitution of the United States of America.

> "* * * The numbering of sections in statutes is a purely artificial and unessential arrangement resorted to for purposes of convenience only, and can never be allowed to hinder a correct construction of the entire act." Estate of Bull, 153 Cal. 715, 717, 96 P. 366.

4. We now come to the argument that these statutes and their application are repugnant to the State constitutional prohibition against imprisonment for debt, Minn. Const. art. 1, § 12. The defendant company's theory is that the effect of the statute is to create a debt on the part of the employer to his employee who takes time off in the forenoon of an election day to vote and that if the debt is not discharged by payment the employer is subjected to arrest, fine, or imprisonment. No doubt if the pay deduction here of $3.50 were not paid but withheld a civil remedy for debt would arise by operation of this section in favor of the injured employee. But does this debt play any part in imposing criminal liability provided for in the statutes in question? Can it seriously be contended that, if on failure of the company to pay payment were enforced through a civil suit or payment were later voluntarily made, the State of Minnesota would be barred from bringing this criminal action for breach of statutory duty constituting a misdemeanor?

The penal section involved provides that every person who as principal or as an official or agent shall directly or indirectly refuse, abridge, or in any manner interfere with any of the election privileges or immunities of any employee of himself or his principal shall be guilty of a misdemeanor. Section 206.21 says that the employee as a voter may absent himself on election day during the forenoon thereof without a penalty or deduction from salary or wages on account of such absence. The interference directly or indirectly with the voting privileges of

the employee Kennedy began before election day when Davidson met with the industrial relations advisor at the parts depot to discuss the statutory provisions and was informed that employees would not be allowed time off to vote with pay. This interference with Kennedy's voting privileges was further evidenced by the letter of October 29, 1952, previously mentioned, which set out the company's policy in regard to compensation of employees who voted during their work periods. The penalty applied through deduction of wages simply amounted to completion of the interference, abridgment, and refusal of the privilege which had begun prior to election day in 1952.

The Court below followed the case of *Arizona Power Co.* v. *State*, 19 Ariz. 114, 166 P. 275, and held that since a corporation could not be imprisoned it did not come within the constitutional provision forbidding imprisonment for debt; but in its memorandum the Court indicated that the imprisonment-for-debt provision might be applicable in a case involving an individual employer under the same or similar circumstances. We agree with the holding of the trial court that a corporation is not subject to imprisonment if found guilty of a misdemeanor in connection with the pay-while-you-vote statutes of this State; that it cannot benefit by the provision forbidding imprisonment for debt; and that the case could be decided on that ground alone, as was done below. However, we do not feel that the statutes involved here require that a decision be based upon such narrow ground.

The defendant company here was being prosecuted for a breach of statutory duty, namely, the interference, abridgment, or refusal referred to in the penal section, § 210.11. Defendant company contends that the wages it must pay for the period during which an employee absents himself to vote constitute a debt and that since violation of the statutes constitutes a misdemeanor subject to fine, followed by imprisonment on failure to pay the fine, therefore the enforcement of §§ 206.21 and 210.11, in conjunction with § 610.19, would result in an indirect imposition of imprisonment for debt. We cannot agree with that conclusion. No collection of a debt is involved here unless we adopt a most strained construction, since these statutes

raise a statutory obligation to pay rather than a "debt" and prosecution for violation of such statutes only constitutes the legal sanction imposed by the State under its police powers for breach of a statutory duty. Sound analysis indicates that we are dealing with a breach of statutory *duty* arising from a statute in which there is no evidence of a legislative intent to circumvent the constitutional prohibition against imprisonment for debt, and we so hold.

We see no good reason to interfere with the order and judgment of the Court below, and the judgment is accordingly sustained.

Affirmed.

Mr. Justice KNUTSON took no part in the consideration or decision of this case.

APPENDIX II

STATE OF MINNESOTA

OFFICE OF CLERK OF SUPREME COURT

36143

St. Paul, Minn.
April 21, 1954

STATE OF MINNESOTA, Respondent,

vs.

INTERNATIONAL HARVESTER COMPANY, Appellant

SIR:

You will please take notice that on this date the following order was entered in the above entitled cause:

ORDERED, that the petition for reargument herein be and the same hereby is denied and stay vacated.

Yours respectfully,

GRACE KAERCHER DAVIS,
Clerk, Supreme Court.

APPENDIX III

STATE OF MINNESOTA
IN SUPREME COURT

36143

STATE OF MINNESOTA, Respondent-Plaintiff,

vs.

INTERNATIONAL HARVESTER COMPANY, A CORPORATION, Appellant-Defendant

PETITION

To the Supreme Court of the State of Minnesota:

This was an appeal by International Harvester Company, a corporation, defendant in the above entitled action, from the judgment made and entered in the Municipal Court of the City of St. Paul in Ramsey County, Minnesota, on the 1st day of May, 1953, by which judgment said defendant was convicted of violating the provisions of Sections 206.21 and 210.11 of Minnesota Statutes Annotated and a fine of One Hundred Dollars was imposed against it for such violation, and from the whole thereof.

Under date of March 5, 1954, the Supreme Court made and filed its decision affirming and sustaining such judgment.

A petition for rehearing or reargument was thereupon presented to the Supreme Court and under date of April 21, 1954, said Court made and filed its order "that the petition for reargument herein be and the same hereby is denied and stay vacated".

Said appellant, International Harvester Company has elected, pursuant to Section 1257(2) of Title 28, United States Code Annotated, to appeal to the Supreme Court of the United States from the decision of the Supreme Court of the State of Minnesota and under Rule 38½ of said Court now in effect and Section 2101 (c) and (d) of Title 28, United States Code Annotated, appellant has

ninety days after the entry of such judgment or decree within which by such appeal to bring said matter before the United States Supreme Court for review, and is entitled to a stay of execution and enforcement thereof as provided by Section 2101(f) of Title 28, United States Code Annotated and Rule 36 of said Court now in effect.

That it appears that the remittitur from the Supreme Court of Minnesota was issued and sent down to the Municipal Court of the City of St. Paul in Ramsey County, Minnesota, on the same date that order denying the petition for rehearing or reargument was made and filed, and before appellant had an opportunity to determine its course in relation to taking an appeal as aforesaid.

Request is therefore made for the issuance of an order of the Supreme Court of Minnesota recalling its remittitur to said Municipal Court, and to thereupon grant or extend to appellant a further stay for a sufficient length of time to enable it to perfect its said appeal to the Supreme Court of the United States.

Dated at Minneapolis, Minnesota, this 29th day of April, 1954.

FOWLER, YOUNGQUIST, FURBER, TANEY & JOHNSON,
By FRED N. FURBER,
As attorneys for and in behalf of Appellant, International Harvester Company.

ORDER

Upon reading and filing the foregoing petition in the above entitled matter, and the Court being duly advised in the premises,

IT IS ORDERED that the remittitur of this Court issued therein and transmitted to the Municipal Court of the City of St. Paul, Ramsey County, Minnesota, on April 21, 1954, be and hereby is recalled and vacated, and that a stay of execution and enforcement of the Municipal Court judgment appealed from be and hereby is granted

for a period of 90 days from March 5, 1954, *i.e.*, to and including June 3rd, 1954, pending the perfecting of an appeal by International Harvester Company to the United States Supreme Court from the decision of this Court affirming said judgment.

Dated April 29th, 1954.

ROGER L. DELL,
Chief Justice.

(7066)

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HAROLD B. WILLEY,

Supreme Court of the United States

OCTOBER TERM, 1954

No. 130

INTERNATIONAL HARVESTER COMPANY,

Appellant,

vs.

STATE OF MINNESOTA,

Appellee.

Appeal from the Supreme Court of the State of Minnesota

PETITION FOR REHEARING ON DISMISSAL OF APPEAL

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1954—Northwest Brief Printing Co., Minneapolis 15, Minn.

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Supreme Court of the United States

OCTOBER TERM, 1954

No. 130

INTERNATIONAL HARVESTER COMPANY,

Appellant,

vs.

STATE OF MINNESOTA,

Appellee.

Appeal from the Supreme Court of the State of Minnesota

PETITION FOR REHEARING ON DISMISSAL OF APPEAL

To the Above Named Court:

On October 18, 1954, the Court filed an order dismissing the appeal herein for want of a substantial federal question.

It is assumed that the rule by which the presence of a substantial federal question was determined is that stated by this Court in *California Water Service Co. v. City of Redding*, 304 U.S. 252, as follows:

> "Had the decisions in the cases of Alabama Power Co. v. Ickes, 302 U.S. 464, ante 374, 58 S.Ct. 300, supra, and of Duke Power Co. v. Greenwood County, 302 U.S. 485, ante 381, 58 S.Ct. 306, been rendered prior to the filing of the bill of complaint in the instant case, no substan-

tial federal question would have been presented. The lack of substantiality in a federal question may appear either because it is obviously without merit or because its unsoundness so clearly results from the previous decisions of this court as to foreclose the subject. Levering & G. Co. v. Morrin, 289 U.S. 103, 105, 106, 77 L.ed. 1062, 1064, 1065, 53 S.Ct. 549. And, here, although the bill of complaint had been previously filed, and a motion for an interlocutory injunction presented, it was apparent after our decisions in the cases cited that the federal question was without substance and it became the duty of the District Court to dismiss the bill of complaint upon that ground." (p. 255.)

Since the only cases in which so-called pay-while-voting statutes have been the subject of review and decision by this Court are *Day-Brite Lighting, Inc., v. State of Missouri*, 342 U.S. 421, and *Tidewater Associated Oil Co. v. Robison*, 344 U.S. 888, it is also assumed that the dismissal is based upon the misconception that the decisions in those cases, and particularly the *Day-Brite* case, are controlling and foreclose further consideration of the case at bar.

The present appeal is not governed by either of the cited cases, but is distinguishable on the facts and on the specific constitutional questions presented.

ACCORDINGLY, APPELLANT HEREBY PETITIONS THIS COURT FOR A REHEARING ON THE ISSUE OF WHETHER A SUBSTANTIAL FEDERAL QUESTION IS PRESENTED, AND PRAYS FOR THE REINSTATEMENT OF THE APPEAL AND A DETERMINATION THEREOF UPON THE MERITS, ALL UPON THE GROUNDS HEREINAFTER STATED:

I.

STATUTES INVOLVED

Section 206.21, *M.S.A.*, is directed against every employer of employees entitled to vote in the State of Minnesota, and this includes individuals, partnerships and associations or corporations as well as their officers and agents. This statute, in conjunction with Sections 210.11 and 610.19, *M.S.A.*, has widespread application and its effect is of paramount importance to all persons affected thereby. (S.J. 10, 11-15, 19.)[1]

The nature and history of the action here involved, the charge against appellant, the judgment of conviction, and the affirmance of the judgment by the Supreme Court of Minnesota, are shown at pages 5 to 9 of the Statement of Jurisdiction.

The short facts upon which the judgment of conviction was based appear at pages 18 and 19 of the Statement of Jurisdiction.

As a "person" who is directly and adversely affected and injured, and as a member of the class of persons whose rights are also directly affected by Section 206.21, in conjunction with Sections 210.11 and 610.19, *M.S.A.*, appellant may attack the constitutionality of the statutes, under the Constitution of the United States, as to all matters wherein it is directly affected, as well as those affecting the class of employers to which it belongs (S.J. 14-15).

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[1]Numerals appearing in parenthesis after the letters S. J. refer to the page or pages of appellant's Statement of Jurisdiction.

II.

PRIOR DECISIONS RELATING TO PAY-WHILE-VOTING STATUTES DISTINGUISHABLE AND NOT CONTROLLING

The case at bar cannot be disposed of by application of the principles announced in either the case of *Day-Brite Lighting, Inc., v. Missouri*, 342 U.S. 421, or in the case of *Tidewater Associated Oil Company v. Robison*, 344 U.S. 804, 344 U.S. 888, involving pay-while-voting statutes of other states, which are the only cases of this type decided by this Court.

Unlike the Missouri statute, as it is characterized by the Court in the *Day-Brite* case, Section 206.21 was not designed to "end the coercion of employees by employers in the exercise of the franchise." That phase of the exercise of the franchise is fully covered and protected by other sections of the Minnesota statutes (S.J. 42-44). Nor is the Minnesota statute a wage law. It does not attempt to regulate maximum or minimum wages or hours of labor (if it did, the same vice of inequality would be present). It has, on the contrary, for its objective the inducing of employees to vote whose hours of work conflict with the hours the polls are open, by granting them specified privileges, as its language makes clear. It provides that:

> "Every employee entitled to vote at an election shall be permitted to absent himself from his work for that purpose *during the forenoon* of each election day, without a penalty or deduction from salary or wages on account of such absence." (Italics supplied.)

and imposes upon the employer the implied promise (resulting from the principle that valid regulatory statutes must be read into and form a part of every contract to which they relate, superseding inconsistent provisions) to pay full wages to the employee to whom the statute applies.

The normal type or pattern of pay-while-voting statutes usually impose the burden on employers of subsidizing the

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voting of their employees entitled to vote by being compelled to allow them time off from work to vote and to pay them for such time though no services are performed during such period. On the other hand, under Section 206.21, some employees, but not all, are given a bonus for voting, notwithstanding the fact that voting is a privilege to be exercised by each voter as best he can and without reward.

In the *Day-Brite* case this Court held, basically, that it would leave to the discretion of local legislatures the wisdom of enacting this experimental type of legislation, and refused to consider the question as one within the purview of the due process and equal protection clauses of the Fourteenth Amendment and the Contract Clause of Article 1, Section 10, of the Constitution of the United States. It appears clear, however, that in doing so the Court did not consider or decide the new and different question presented by this appeal. The Court said:

> "The only semblance of substance in the constitutional objection to Missouri's law is that the employer must pay wages for a period in which the employee performs no services. Of course, many forms of regulation reduce the net return of the enterprise; yet that gives rise to no constitutional infirmity. See Queenside Hills Realty Co. v. Saxl, 328 US 80, 90 L.ed. 1096, 66 SCt. 850; California State Auto. Asso. Inter-Insurance Bureau v. Maloney, 341 US 105, 95 L.ed. 788; 71 SCt. 601, supra. Most regulations of business necessarily impose financial burdens on the enterprise for which no compensation is paid. Those are part of the costs of our civilization. Extreme cases are conjured up where an employer is required to pay wages for a period that has no relation to the legitimate end. Those cases can await decision as and when they arise. The present law has no such infirmity. It is designed to eliminate any penalty for exercising the right of suffrage and to remove a practical obstacle to getting out the vote. The public welfare is a broad and inclusive concept. The moral,

> social, economic, and physical well-being of the community is one part of it; the political well-being, another. The police power which is adequate to fix the financial burden for one is adequate for the other. The judgment of the legislature that time out for voting should cost the employee nothing may be a debatable one. It is indeed conceded by the opposition to be such. But if our recent cases mean anything, they leave debatable issues as respects business, economic, and social affairs to legislative decision. We could strike down this law only if we returned to the philosophy of the Lochner, Coppage and Adkins cases." (pp. 424-425.)

The Court was not called upon, as it is in this case, to weigh any question of unequal treatment of affected parties of the same class. Unlike the Minnesota statute, the statute of Missouri extended its benefits and imposed its burdens on the basis of equality of treatment as between employees on the one side and employers on the other. The *Tidewater* case involved a California pay-while-voting statute, which likewise accorded equal treatment to employees receiving the benefits thereof and imposed equal burdens upon employers affected thereby, and hence did not involve the questions that are paramount on this appeal. That case was summarily disposed of by the granting of a motion to affirm the judgment of the Court below which had held that the word "necessary" could not be read into the statute in relation to the time off granted employees to vote.

The important distinction between those cases and this appeal is that the challenged phase of the compulsory subsidy, imposed by Section 206.21, not upon all employers, but only upon employers of employees who absent themselves from their work in the forenoon of an election day, goes far beyond the normal pattern of pay-while-voting statutes under consideration in the *Day-Brite* and *Tidewater* cases.

In neither of the two cited cases was there involved, as in the case at bar:

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1st. A challenge to the constitutionality under the provisions of the Fourteenth Amendment that no state shall "deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws," on the ground that

(1) The statute under review, by designating for its benefits only forenoon employees entitled to vote at an election, discriminates against, and accords partial and unequal treatment to, members (employees on the one hand and employers on the other) of the same class, all of whom in their respective classes are in the same or similar circumstances in relation to voting by such employees (i.e., a conflict in varying degrees exists between the hours of employment and the hours during which the polls are open for voting), thus not only removing the statute from the category of a public purpose enactment but constituting it a private or special privilege grant, or bonus, for the benefit of "forenoon" employees only, and consequently fundamentally unconstitutional and void as class legislation.

(2) The Minnesota Supreme Court erred by splitting the declared and natural classification for accomplishing the objective (to induce voting by all employed persons) of Section 206.21, viz., "every employee entitled to vote at an election," into two parts and applying different regulations to the dissevered portions. In other words, the Court used the portion of the statute which granted the benefits or bonus to the "forenoon" employees as the basis for splitting the natural and declared classification as if it applied only to forenoon employees and on that theory determined that the constitutional provisions above referred to were not violated. This, appellant contends, was an improper and invalid classification.

See, for details, subdivisions III and IV hereof.

2nd. A challenge to constitutionality under that portion of the Fourteenth Amendment which forbids States to make or enforce any law which shall abridge the privileges or immunities of citizens of the United States (included in which is the right of individuals to freedom of contract) on the ground:

> Did the Minnesota Supreme Court err in holding that Section 206.21 is not violative of Article 1, Section 12, of the Constitution of the State of Minnesota, prohibiting imprisonment for debt; that a provision in an employment contract that employees shall be allowed the necessary time off *without pay* to vote in any Federal State or Municipal election (S.J. 18) is invalid, and that employees entitled to the benefits of the statute cannot waive them; and, hence, the subsidy imposed by said statute upon employers is not violative of the Fourteenth Amendment forbidding States to make or enforce any law which shall abridge the privileges or immunities of citizens of the United States?

The matters embraced in the foregoing statement and questions present important and substantial federal questions relating to the constitutionality of Section 206.21 that were not involved in and are not foreclosed by the prior decisions of this Court.

III.

LEGISLATIVE HISTORY

In Minnesota the polls are open from seven o'clock in the morning until eight o'clock in the evening. Practically all employed persons entitled to vote find some conflict between their working hours and the hours the polls are open. Since voting is a personal privilege, each may choose the time that suits him. *State v. Erickson*, 119 Minn. 152, 137 N.W. 385; *United States v. Bathgate*, 246 U.S. 220, 227.

There are two naturally affected groups or classes involved. One class consists of employees entitled to vote whose hours of employment conflict in some degree with the hours the polls are open. Each member of this class is consequently in the same or similar circumstances as the other members in relation to voting. This class will be referred to as "affected employees." The other class consists of the employers of such employees entitled to vote whose hours of employment in some degree conflict with the hours the polls are open. Each member of this class is consequently in the same or similar circumstances as the other members in relation to voting by their employees. This class will be referred to as the "affected employers."

To induce the affected employees to vote, *General Statutes of Minnesota 1894*, Section 114, provided that "by obtaining permission" as therein provided, any person entitled to vote at any general or special election "shall be allowed time off from any service or employment and such voter shall not, because of so absenting himself, be liable for any penalty, nor shall any deduction be made on account of such absence from his usual salary or wages." Violation was declared a misdemeanor and punishable as such.

Laws of Minnesota 1901, Chapter 241, created a Commission to codify the general laws, not as a new body of laws but

as a rearrangement and restatement of the previously existing general statutory law of the State, with such amendments as the Commission and the Legislature deemed advisable.

The Commission recommended and the Legislature approved and enacted *Revised Laws of Minnesota 1905*, Section 283 of which revised Section 114, *General Statutes of Minnesota of 189½*, to read as follows:

> "Every employee entitled to vote at a general or city election shall be permitted to absent himself from his work for that purpose during the forenoon of each election day, without a penalty or deduction from salary or wages on account of such absence."

Except for an amendment changing the words, "general or city election" to "an election," Section 283 is identical with the present Section 206.21, *M.S.A.*

In the 1905 revision of Section 114 of the 1894 General Statutes, there was enacted as Section 371, without change, the provision now appearing as Section 210.11, *M.S.A.*, as follows:

> "*Every person* who as principal or as an official or agent of any other person, shall directly or indirectly refuse, abridge, or in any manner interfere with any of the election privileges or immunities of any employee of himself or his principal shall be guilty of a misdemeanor."

Throughout all of this period Section 610.19, *M.S.A.*, was in effect and provided that misdemeanors such as declared by Section 210.11

> "be punished by imprisonment in the county jail for not more than three months, or by a fine of not more than $100.00."

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IV.

SECTION 206.21, M.S.A., IS FUNDAMENTALLY INVALID AS CLASS LEGISLATION AND VIOLATIVE OF THE FOURTEENTH AMENDMENT

1. Governing Principles of Classification.

Regulatory statutes necessarily involve classification, and it is a cardinal rule that classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced should be treated alike.

F. S. Royster Guano Co. v. Virginia, 253 U.S. 412;

Old Dearborn Distributing Co. v. Seagram Distillers Corporation, 299 U.S. 183;

State of South Carolina ex rel. Phoenix Ins. Co. v. McMasters, 237 U.S. 63, 78.

The Fourteenth Amendment, in declaring that no State shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws, intended that there should be no spoliation of property, but that *equal protection and security should be given to all under like circumstances* in the enjoyment of their personal and civil rights; and all persons should be equally entitled to pursue their happiness and acquire and enjoy property.

Barbier v. Connolly, 113 U.S. 27.

Equal protection of the laws is something more than an abstract right; it is *a command* which the State must respect, *the benefits of which every person may demand.*

Hill v. Texas, 316 U.S. 400.

The purpose of the clause is to rest the rights of all persons upon the *same rule under similar circumstances.*

Frost v. Corporation Commission, 278 U.S. 515;

Claybrook v. City of Owensboro (D.C. Ky. 1883), 16 Fed. 297.

Statutes *must not be discriminatory between members of the same class.* Such discrimination constitutes a denial of equal protection of the law.

Glicker v. Michigan Liquor Control Commission (C.C.A. 6), 160 F.2d 96, 99;

Cotting v. Kansas City Stock Yards Company, 183 U.S. 79;

Hartford Steam Boiler Inspection & Ins. Co. v. Harrison, 301 U.S. 459;

Carleton Screw Products Co. v. Fleming (C.C.A. 8), 126 F.2d 537, 541.

The history of Section 206.21, set forth above, shows that the objective of the statute was to induce voting by "every employee entitled to vote at an election," and that the class of employees embraced in that designation were those whose hours of employment (though variable in different occupations having different work shifts) conflicted with the hours during which the polls were open for voting. Each member of the class was thus in the same or similar circumstances in relation to voting.

It has been pointed out that each affected employee was, because of the conflict of time, compelled of necessity to choose one of several courses of procedure in relation to voting.

In view of this situation the affected employees, i.e., "every employee entitled to vote at an election," constituted a natural, reasonable and logical basis of classification for the desired objective of inducing such employees to vote.

However, in the process of codifying the statutes in 1905, the Minnesota Legislature, by inadvertence or otherwise,

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failed to grant impartial and equal treatment, as required by the Constitution, to each affected employee, but accorded discriminatory treatment to members of the same class by limiting the privilege or bonus granted by the statute *to forenoon employees* only, denying it to all of the other affected employees whose work period did not embrace the forenoon of an election day.

Conversely, the statute classified the affected employers as employers of employees entitled to vote at an election, and accorded discriminatory treatment to affected employers of forenoon employees by compelling them to subsidize the voting of only their forenoon employees who absented themselves to vote in the forenoon of an election day and relieving all other affected employers of the subsidy burden.

Hence, both from the standpoint of affected employees and from the standpoint of affected employers, each of whom in the respective class to which he belonged was in the same or similar circumstances in relation to voting by the employees, the statute was discriminatory, unreasonable, partial and unequal in the treatment accorded to the members of the respective classes.

2. Section 206.21, M.S.A., Fails of a Public Purpose and Grants a Special Privilege or Bonus to Forenoon Employees Only.

It is elementary that a statute which is partial, and arbitrarily accords unequal treatment to members of the same class, each of whom is in the same or similar circumstances, does not fulfill the requirements of a valid public or general welfare purpose.

That the statute will not accomplish the purpose of inducing "every employee entitled to vote at an election" to do so by favoring the forenoon employees and denying its privileges to all other affected employees is obvious. To avoid loss of pay the latter will in all probability vote at some

time before or after working hours during the thirteen hours the polls are open, or refrain from voting.

The same procedure is open to forenoon workers but, these workers will in all probability take advantage of the special privileges granted them alone.

The ostensible purpose of the statute to induce "every employee entitled to vote at an election" to do so, is not accomplished by the device of granting a special privilege or bonus to the "forenoon" portion of the affected employees class.

3. Classification Misinterpreted and Erroneously Split.

The Minnesota Supreme Court, in finding no discriminatory or unequal treatment accorded affected employees (S.J. 70-71), erroneously interpreted Section 206.21 as if the forenoon employees to whom the statute grants the privilege, constituted the class instead of conforming to the express statutory classification, viz., "every employee entitled to vote," to whom the privileges or bonuses must have been extended if impartial and equal treatment were to be applied. This is indicated by the Court's recognition of the rule that "class legislation, discriminating against some and favoring others, is prohibited," and its declaration that

> "legislation which, in carrying out a public purpose, is not prohibited * * * if, within the sphere of its operation, it affects all persons similarly situated and the classification is not arbitrary." (S.J. 72.)

Earlier in its decision the Court attempted to meet the objection that Section 206.21 offended the equality and due process provisions of the Fourteenth Amendment because it applied only to forenoon employees by saying:

> "Of course, the legislative judgment was exercised here when these statutes were adopted, and the members of the legislature no doubt took the view that those who did not work forenoons would have ample opportunity to vote then; that those on daytime shifts would be suf-

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ficiently aided in freely exercising the voting franchise by limiting time off for voting without penalty or pay deduction to the forenoon of election day; and that no greater burden need be placed upon the employer than this to protect the right of suffrage and guard and promote the general welfare." (S.J. 72.)

The Court is merely conjecturing as to what prompted the change from the prior law, and does not face the stronger probability that the 1905 codification commission and the Legislature made an error in introducing into the statute the partial and unequal treatment of affected employees in the same or similar circumstances as regards voting, in that each found his hours of employment conflicting with some of the five forenoon hours and the eight afternoon hours the polls were open.

For the Court to assume or conjecture that "the members of the Legislature no doubt took the view that those who did not work forenoons would have ample opportunity to vote then," ignoring the opportunity of those who did not work afternoons, does not alter the Legislature's choice of language whereby it expressly classified those to be benefited by the special privilege or bonus as "every employee entitled to vote at an election," and those against whom the burden imposed by the statute is directed as "the employer of every employee entitled to vote at an election."

It is clear from the authorities cited that to interpret Section 206.21 by ignoring its plainly declared and natural classification of employees as "every employee entitled to vote at an election," and forcing a construction as if the statute read

> "Every employee entitled to vote at an election who is employed in the forenoon, but no others, shall be permitted to absent himself from his work for that purpose during the forenoon of each election day, without a penalty or deduction from salary or wages on account of such absence."

is not only judicial legislation but is violative of the elementary rule against splitting a natural classification in two parts or fractions and then arbitrarily designating the dissevered fractions of the original unit as two classes and enacting different rules for the government of each.

Fountain Park Company v. Hensler, 199 Ind. 95, 155 N.E. 465.

4. Prior Decisions Distinguished.

The basic defect in Section 206.21, both as written and as constructed, is not within the pattern of either the *Day-Brite* case or the *Tidewater* case. It has the inherent elements of invalidity, whereas the statutes considered in the cases cited had the normal pattern of equality of treatment of affected parties, both employers and employees. The decision in the *Day-Brite* case granted a bonus to employees, conversely compelled employers to subsidize the voting of their employees, and declared in effect that this would not be deemed a federal question under the Fourteenth Amendment but was a local legislative problem. The case at bar, however, presents fundamental and substantial federal questions that are not within the pattern of, and are not foreclosed by, the matters disposed of by those cases.

V.

OTHER ISSUES

The Minnesota Supreme Court abridged the freedom of contract protected by Section 1 of the Fourteenth Amendment by invalidating the waiver of the bonus contained in the contract of employment.

A statute granting a privilege or bonus to part of a class is not a public purpose statute. The bonus was neither a tax nor a fine and did not inure to the benefit of the state. It was a private benefit and, under elementary principles, sub-

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ject to waiver. Every forenoon worker waives the benefit when he votes during working hours in the afternoon or evening, or votes out of working hours, or votes not at all. The only difference is that here the waiver was effected by contract in advance. (S.J. 18, 25-33.)

The Minnesota Supreme Court also erred in refusing to hold that Sections 206.21, 210.11 and 610.19 provide for imprisonment for debt in violation of Article 1, Section 12, of the State Constitution. (S.J. 19-22, 23-35.)

Section 210.11 makes it a misdemeanor, punishable by imprisonment under Section 610.19, for an employer to "refuse, abridge, or in any manner interfere with any of the election privileges or immunities of any employee." Appellant did not interfere with the employee's absenting himself for two hours in the forenoon of an election day to vote (S.J.18). The complaint charged that appellant abridged and interfered with the employee's election privileges in that it did "deduct from the wages" of the employee $3.50 (S.J. 5). Thus the offense consists of refusing to pay a debt in the form of money claimed to be due the employee, and thus the statutes provide that such refusal be punished by imprisonment (S.J. 19-22). That violates the prohibition against imprisonment for debt. (See *Meyer v. Berlandi*, 39 Minn. 438, 40 N.W. 513). Whether a corporation can be imprisoned for debt or not (see *State v. Prudential Coal Company*, 130 Tenn. 275, 170 S.W. 56), a statute applicable to both individuals and corporations in like circumstances, which is unenforceable as to one because of constitutional restrictions, can not be enforced against the other. (See *Barrows v. Jackson*, 346 U.S. 249, 255-256.)

If the Minnesota Supreme Court had held that the employee's waiver of the privilege to absent himself without loss of pay was effectual, no federal question would be presented. This is also true had the Court held Section 206.21

invalid under Article 1, Section 12, of the Minnesota Constitution. The contrary holdings give rise to questions under the Constitution of the United States, and on those questions, as well as questions under the State Constitution, such as those discussed under this heading, the decisions of the State Courts are not controlling. Particularly is this so when, as in the case at bar, the rights of the parties under the employment contract (dated January 2, 1951) (S.J. 66) arose prior to any decision of the Minnesota Supreme Court as to the validity under the State Constitution of the statute here involved.

Burgess v. Seligman, 107 U.S. 20, 33;
Coombes v. Getz, 285 U.S. 434, 441;
Great Southern Fire Proof Hotel Co. v. Jones, 193 U.S. 532, 542-548.

It is respectfully submitted that the order of dismissal should be vacated and the appeal reinstated.

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CERTIFICATE OF COUNSEL

The undersigned states that the foregoing petition for a rehearing in relation to the dismissal of the appeal in the above entitled cause is presented in good faith and not for delay.

G. Aaron Youngquist,
Attorney for Appellant.

OCTOBER 18, 1954.

Decision Per Curiam.

No. 130. INTERNATIONAL HARVESTER CO. *v.* MINNESOTA. Appeal from the Supreme Court of Minnesota. *Per Curiam:* The appeal is dismissed for the want of a substantial federal question. *G. Aaron Youngquist* and *Fred N. Furber* for appellant. Reported below: 241 Minn. —, 63 N. W. 2d 547.

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